Nissens
GENERAL CONDITIONS FOR THE SUPPLY OF PRODUCTS AND SERVICES (hereinafter referred to as the “General Conditions”) 1 APPLICABILITY 1.1 These General Conditions shall apply to all supplies of products and services (hereinafter referred to as “the Product”) by NISSENS and/or any subcontractor/manufacturer referred to in the Contract. (hereinafter referred to as “NISSENS”), unless otherwise agreed in writing.
2. NISSENS reserves the right to change these General Conditions at any time. A new sales or supply contract between NISSENS and Purchaser (hereinafter referred to as the “Contract”) shall govern the relationship between Purchaser and NISSENS in respect of the Product. In case of any discrepancy or inconsistency between the Contract and these General Conditions, the Contract shall prevail.
2 PRODUCT INFORMATION 3.1 Only information and data included in the Contract and/or the General Conditions are binding on NISSENS. All information and data contained in product brochures, technical catalogs, other technical descriptions shall only be used for the purpose for which they are provided and may not be copied or communicated to any third party without NISSENS’ written consent.
4 DELIVERY 5. Any trade term agreed in the Contract shall be construed in accordance with INCOTERMS 2010. Unless otherwise agreed in writing, all deliveries by NISSENS shall be Ex Works (INCOTERMS 2010). Delivery by NISSENS shall be permitted unless otherwise agreed in writing in the Contract.
V RULES AND REQUIREMENTS 6. These General Conditions shall apply together with any sales and/or supply agreements (hereinafter referred to as the “Product”). In the event that such rules and/or requirements are amended after the conclusion of the Contract, NISSENS will notify Purchaser in due time, and where it is clear from the circumstances that the contract terms will be unreasonably onerous, Purchaser bears the risk of any amendments to such rules and/or requirements undertaken to change the Product accordingly, but remaining herein shall be construed as an obligation on NISSENS to make such change.
VI TIME OF DELIVERY, DELAY 7. Delivery shall be made no later than the date agreed in the Contract. If no time of delivery is agreed, delivery shall be made on a date deemed reasonable by NISSENS. 8. In the event that delivery from NISSENS is delayed, NISSENS receives notice hereof from Purchaser or in the event that NISSENS anticipates that it will be unable to deliver the Product on the agreed date of delivery, NISSENS shall forthwith notify Purchaser stating the reason for the delay and fix an additional period of reasonable length during which delivery will be made. If NISSENS does not deliver within this additional period of time, Purchaser is entitled to avoid the Contract in whole or in part.
9. The avoidance of the Contract by Purchaser shall be sole and exclusive remedies available to Purchaser in case of delay on the part of NISSENS. Any other remedy against NISSENS based on such delay is excluded. 10. If Purchaser anticipates that he will not take delivery of the Product at the agreed time of delivery, he shall forthwith notify NISSENS thereof stating the reason and the time when he will be able to take delivery.
11. NISSENS in connection with refusal by Purchaser to take delivery fix a final period of time of reasonable length for Purchaser to take delivery. If Purchaser fails to take delivery within such period, NISSENS may avoid the Contract in whole or in part. In addition NISSENS shall in any case be entitled to liquidated damages equal to 15 per cent of the purchase price. In the event that NISSENS incurs a loss in excess of 15 per cent of the purchase price, Purchaser shall indemnify NISSENS for any such loss. 12. If Purchaser fails to take delivery at the agreed time of delivery, he shall pay such part of the purchase price as becomes due on delivery as if delivery had taken place. NISSENS shall arrange for storage of the Product at the risk and expenses of Purchaser.
VII PAYMENT 13. Unless otherwise agreed, the purchase price shall be paid on the date of delivery. 14. Notwithstanding the means of payment, payment shall not be deemed to have been effected until the full outstanding amount has been irrevocably credited to NISSENS’ account.
15. If Purchaser fails to pay on the agreed date, NISSENS shall be entitled to interest from the date on which payment was due. The rate of interest against NISSENS based on such delay is excluded. 16. If Purchaser fails to pay on the agreed date, NISSENS shall be entitled to suspend performance of any of its obligations under the Contract until full and effective payment has been effected. NISSENS shall forthwith give notice of the suspension to Purchaser.
17. Any delay in payment by Purchaser shall be deemed a fundamental breach entitling NISSENS to avoid the Contract and to claim damages for the loss incurred.
VIII RETENTION OF TITLE 17. All Products remain the property of NISSENS until full and effective payment has been effected. The retention of title shall not affect the passing of risk.
IX WARRANTY 18. Pursuant to Clauses 19 to 25 below, NISSENS will remedy any defect or non-conformity to specifications resulting from faulty design, faulty workmanship (hereinafter referred to as the “Defect”). 19. Purchaser must, prior to expiration of the warranty period, notify NISSENS of any Defect immediately after he discovers or ought to have discovered the Defect. The notice shall specify the nature of the defect and, if possible, the number and location of numbers and/ or packaging. In case that these numbers are not available, a Nissens invoice must be used as documentation that the product was purchased from NISSENS.
20. In any case, Purchaser shall give NISSENS notice of any Defect within 12 months from the date when Purchaser’s product, in which the Product is installed, is put into operation and always within 18 months from the date of delivery of the Product by NISSENS. If timely notice is not given, Purchaser loses the right to remedy the Defect.
21. NISSENS may at its discretion choose either to deliver a substitute product or to repair any defective Product. If NISSENS' substitute product is not available, NISSENS will promptly refund the purchase price of the Product. If NISSENS fails to deliver a substitute Product or repair the Product within the additional period of 12 months, Purchaser may consequently, at his discretion, either:
   a) a proportionate price reduction up to 10 per cent of the purchase price; or
   b) avoid the contract provided that the Defect constitutes a fundamental breach by NISSENS.
   22. A defective Product, or parts thereof, having been replaced by NISSENS shall not be made available to NISSENS by Purchaser.
   23. NISSENS is not liable for any damage arising out of any use of the Product not in accordance with the conditions of operation provided for in the Contract or any other improper use of the Product.
   24. NISSENS excludes liability for any damage caused by lack of or faulty maintenance, incorrect installation or faulty repair by Purchaser or by any generation carried out without NISSENS’ written consent. NISSENS is not liable for normal wear and tear or deterioration.
   25. THE REMEDIES PROVIDED IN CLAUSES 19 TO 24 SHALL BE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES WHETHER WRITTEN OR ORAL, EXCEPTED ARE SUCH WARRANTIES IMPLIED FROM THE SPECIFICATIONS AGREED UPON AND WARRANTIES REQUIRED BY MANDATORY APPLICABLE LAWS.
X PRODUCT LIABILITY 26. In no event shall NISSENS be held liable for death or injury to persons or for damage to real or personal property caused by defects in the Product shall be limited to the liability prescribed by the mandatory rules of EU product liability legislation. 27. NISSENS shall not be liable for any damage to real or personal property caused by the Product, the Negligence of the Contractor, or any other improper use of the Product. 28. NISSENS excludes liability for any damage caused by lack of or faulty maintenance, incorrect installation or faulty repair by Purchaser or by any generation carried out without NISSENS’ written consent. NISSENS is not liable for normal wear and tear or deterioration.
   29. THE REMEDIES PROVIDED IN CLAUSES 19 TO 24 SHALL BE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES WHETHER WRITTEN OR ORAL, EXCEPTED ARE SUCH WARRANTIES IMPLIED FROM THE SPECIFICATIONS AGREED UPON AND WARRANTIES REQUIRED BY MANDATORY APPLICABLE LAWS.
XI FORCE MAJEURE 30. If Force Majeure prevents Purchaser from fulfilling its obligations, or causes a non-conformity resulting from faulty design, materials or workmanship to the Defect constitutes a fundamental breach by NISSENS.
   31. A party claiming to be affected by Force Majeure shall forthwith notify the other party in writing on the intervention and on the cessation of any such circumstance.
   32. Regardless of what might otherwise follow from these General Conditions, either party shall be entitled to avoid the Contract by notice in writing to the other party if performance of the Contract has been suspended under Clause 30 for more than six months.
XII ANTICIPATED NON-PERFORMANCE 33. Notwithstanding the General Conditions regarding suspension, each party shall be entitled to suspend the performance of its obligations under the Contract if any Defect occurring under the Contract is caused by any event other than Force Majeure. A party suspending its performance of the Contract shall forthwith notify the other party thereof in writing.
XIII CONFIDENTIALITY 34. Either party shall keep confidential any information received from the other party and perform its obligations under the Contract in such a way as to provide that the information received is not within the public domain.
XIV CONSEQUENTIAL LOSSES ETC.
35. There shall be no liability for either party towards the other party for any punitive, indirect, special, exemplary or consequential damage including, but not limited to, any consequential losses arising out of loss of production, loss of profit, loss of use, loss of earnings, loss of goodwill or loss of contracts.
XV APPLICABLE LAW AND DISPUTES 36. These Conditions, and any contractual relationship between NISSENS and Purchaser in connection with the Products, shall be governed by the laws of the country in which the Project is located, except as otherwise provided in these General Conditions and/or in the Conditions. In the event it is not possible to apply NISSENS or Purchaser in connection with the Products, the parties shall mutually agree to the applicable law.
   37. All disputes and claims arising out of or in connection with these General Conditions and/or in the Conditions shall be subject to the jurisdiction of the Commercial Court of Denmark.
   38. Any dispute or claim arising out of or in connection with these General Conditions and/or in the Conditions shall be subject to the jurisdiction of the Commercial Court of Denmark.

09/2018