

Company	UTG UNIVERSALTECHNIK GMBH
Address	8051 Graz – Thalstrasse 14 / Austria
Document	utg ekb 181219 rev 02 final-EN.docx

Subject	„ GENERAL TERMS AND CONDITIONS OF PURCHASE “
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1. Definitions

- "CUSTOMER" means UTG UNIVERSALTECHNIK GMBH
- "CONTRACTOR" means the person, firm or company to whom the Purchase Order is addressed.
- "TCP" means these General Terms and Conditions of Purchase
- "PURCHASE ORDER" means a written agreement (contract, order) between the Customer and the Contractor consisting of, amongst others:
- a Purchase Order referencing the corresponding Order Number
 - UTG's General Terms and Conditions of Purchase
 - plans, drawings, specifications, instructions, guidelines, reports
- "ACKNOWLEDGEMENT OF ORDER" means the unreserved written acknowledgement of the Customers's written Order by the Contractor.

2. Validity, Offer, Purchase Order, Contract

- 2.1** These TCP shall generally be valid for any Purchase Orders made out by the Customer. The individual clauses of these TCP shall unreservedly be valid unless there are any explicit Purchase Order amendments either made in the Purchase Order itself or attached to the Purchase Order in the form of separate Purchase Order amendment documents.
- 2.2** Offers by the Contractor shall basically be binding and free of cost to the Customer.
- 2.3** The Contractor shall be bound to its offer for a period of 4 weeks from receipt of the offer by the Customer.
- 2.4** Only duly signed Purchase Orders shall be valid. Any Terms and Conditions of Sale by the Contractor shall only apply if they are expressly acknowledged in writing by the Customer. Any advance orders placed verbally, or by telephone, or fax, or e-mail shall require the Customer's additional Order in writing to be valid. In case of Purchase Orders made out by fax or e-mail that will not be followed by an additional Purchase Order in writing, this fact will be pointed out in the Purchase Order.
- 2.5** Prior to acceptance of a Purchase Order, the Contractor shall examine the data and specifications including attachments/drawings contained in the Purchase Order. Considerations, which could affect the supplies and services provided by the Contractor, as well as defects which are discernible beforehand and any lack of data, if any, shall immediately be pointed out in writing to the Customer. (Duty to warn!)
- 2.6** Obvious defects and/or errors in the Purchase Order and its relevant documents shall not be considered binding for the Customer.
- 2.7** In case of any material provided to the Contractor by the Customer, this material shall be duly examined by the Contractor and may only be processed after successful examination. In case of any defects of the provided material, these defects shall immediately be pointed out in writing to the Customer.

3. Acknowledgement of Order

- 3.1** A copy of Customer's Order shall be returned to the Customer duly signed within 8 days after receipt by the Contractor as a proof that the Contractor unreservedly accepts the Order. Any other form of Order Acknowledgement shall not be accepted by the Customer. Upon receipt of the Acknowledgement of Order, the Contract shall be considered concluded.
- 3.2** Partial or complete delivery as required on the Order shall be considered as unreserved acceptance of the Purchase Order and its related conditions even without the prior Acknowledgement of Order in writing.
- 3.3** The Purchase Order shall also be considered as unreservedly accepted, if the Contractor upon receipt of the order observably starts to process the Purchase Order.
- 3.4** The Customer shall always have the right to cancel Purchase Orders that are not duly signed or were not acknowledged in time.
- 3.5** The Customer shall, within reasonable limits, have the right to request amendments to the design or quantity of the subject matter of the contract even after conclusion of the contract, if such an amendment is required for exceptional business reasons and customary in the trade. Any effects on delivery dates and costs shall be agreed upon by both parties in an appropriate and amicable manner. Any hence resulting price increase or deadline shift shall only be accepted if the amendment does actually and evidentially justify a price increase or a deadline shift and if the Contractor notifies the Customer in writing right after such an amendment

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4. Prices

Unless otherwise defined in the Purchase Order the following shall apply:

- 4.1 Prices are fixed prices and include packing, preservation, transport insurance, customs clearance and delivery CPT (in Austria) and unloaded according to INCOTERMS in the latest valid issue.
- 4.2 In case of any fees, taxes, customs duties or any other duties related to delivery, these duties shall be borne by the Contractor, statutory provisions permitting.
- 4.3 If prices and conditions (packing, etc.) are not already contained in the Purchase Order but announced to the Customer after placing of Order, the announced prices and conditions shall require the Customer's approval in writing to become valid.
- 4.4 Prices and all other conditions of a Purchase Order (with the exception of the delivery date) shall keep their validity – for possible repeat orders - for the period of one year from order date.

5. Dates

- 5.1 If the Contractor fails to meet an agreed date, the Customer shall have the right to request, at Customer's option, either
 - (i) the delivery at the earliest possible date and compensation for the belated delivery or
 - (ii) to demand compensation for non-performance and cancel the purchase.
 The delivery date shall be considered met if the ordered supplies and/or services are provided fully and flawlessly at the place and time agreed.
- 5.2 If the Contractor fails to meet a deadline - for what reason whatsoever, with the exception of the cases of *force majeure* listed below - for the supply of goods/services or partial supply of goods/services if such partial supply was agreed before, the Customer shall hold the right, even without granting a later delivery date, to withdraw from the whole contract.
- 5.3 In any case the Contractor shall compensate the Customer, independent of the fault, for any disadvantages resulting from the delay. Should the Customer withdraw from the contract pursuant to item 5.2, the Contractor shall also compensate for any disadvantages arising in connection with a possible covering transaction (substitute performance). Disputes shall not entitle the Contractor to hold back or cancel due supplies and/or services.
- 5.4 In case of supplies and/or services provided before the agreed delivery date, which shall only be permissible with the prior approval from the Customer, the period of payment shall nevertheless commence at the originally agreed date. Any costs (storing fees, etc.) and risks related to unapproved early deliveries shall be borne by the Contractor.
- 5.5 The Customer shall have the right, without having to provide evidence for a damage, to charge the Contractor with a penalty for delayed delivery of 2 % of the total order value for each commenced week of delay. The assertion of claims for further damages due to a delay shall not be influenced by this. The Contractor shall not be released from the penalty for delayed delivery if the delivery is fully or partially accepted and/or paid without reservation.
- 5.6 In case the deadline cannot be met due to *force majeure* or additional orders by the Customer, the Contractor shall immediately notify the Customer in writing of the delay otherwise an extension of the delivery time will not be granted. In case of a justified request for extension of the delivery time, a new delivery date shall be agreed in writing. In case of a failure to meet the new delivery date, the originally agreed conditions shall apply.
- 5.7 Circumstances of *force majeure* are defined as inevitable events and circumstances which could not be foreseen by the contract party at the moment of contract conclusion and which prevents this contract party from meeting its contractual obligations. Circumstances of *force majeure* shall include all kinds of war, terrorist attacks and natural disasters. Circumstances of *force majeure* shall not include strikes, production defects, spoilt moulds, supply bottlenecks and delayed delivery by sub-Contractors.
- 5.8 Scope and dates for commercial and technical documents/data are specified in detail in the Purchase Order. Documents/data whose delayed delivery entitles the Customer to charge a penalty for delayed delivery, are marked accordingly in the Purchase Order. The Customer shall have the right, without having to provide evidence for a damage, to charge a penalty for delayed delivery of 0.5 % of the total order value for every commenced week of delayed delivery of documentation. In addition, item 5.2 shall apply correspondingly.

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5.9 The Contractor shall be obliged to take all organisational and order processing-related measures required for strictly meeting all delivery dates within the scope of the Purchase Order (regardless whether goods/services or documents/data are concerned), even if they are not penalized. The Customer shall have the right, in case of any missed deadlines, to charge the Contractor with the expenses for delivery reminders (expenses for telephone calls, faxes, travels, time costs, etc.). Any agreed penalties for delayed delivery shall remain unaffected by this.

6. Packaging

6.1 The goods must be suitably packed for transport in a customary, functional and flawless way. Return of packaging materials only upon Contractor's request and at Contractor's cost and risk.

6.2 All goods must be suitably packed to avoid any damages arising from loading and unloading, transport, weather, storage, etc. Packages with a gross weight of 25 kg or more must be packed suitable for transport with a fork lift. Points of load action and/or the location of the centre of gravity must be clearly marked, if required.

6.3 The Contractor shall be liable for any damages resulting for the Customer from improper packaging.

7. Shipping Instructions

7.1 Unless otherwise agreed in writing, the delivery shall be effected transport insured, carriage paid, unloaded at the destination agreed in the Purchase Order and without packaging costs to the Customer. The risk of transport shall, in principle, be borne by the Contractor. In case of an agreement that the Customer is to bear the risk of transport, the Contractor of the goods shall be obliged, in the event of a damage, to immediately file any claims for compensation such as loss, reduction in value, damages of the goods, etc. with the concerned railway company or freight agents and, at the same time, to cede these claims to the Customer.

7.2 The shipping instructions given by the Customer must be strictly obeyed; any damages or costs resulting from the non-compliance with the shipping instructions or agreed shipping conditions (e.g. additional freight, demurrage, customs duties) shall be solely borne by the Contractor. In case the Customer does not give any shipping instructions or shipping conditions, the Contractor shall choose the most favourable way of shipping and delivery.

7.3 A delivery note shall be sent to the Customer by fax or e-mail immediately at dispatch of every delivery. The shipment must include a packing list and a delivery note. The delivery note and the packing list shall contain the following: Customer's complete Purchase Order number and item numbers, description of contents, consecutive number of package, the usual identification marks, storage instructions, net weight and gross weight, as well as package dimensions. Every package shall clearly show the destination address. In addition, every package shall contain two waterproof packed copies of the packing list: one packed inside the package and one attached to its outside.

7.4 In case of goods delivered duty unpaid, the shipment shall contain the necessary customs certificates, certificates of origin, if required, movement certificates, certificates of identity, etc.

7.5 Any stamp duties or other duties shall be borne by the Contractor.

7.6 In case of shipments of oversized load, the Contractor shall be obliged to apply for the necessary permits at least 6 weeks prior to the dispatch of such shipments at the concerned railway administration or, in case of trucking, the related authorities.

7.7 If delivery documents do not comply with the Customer Order, the Customer shall have the right to reject the shipment at Contractor's cost and/or to claim indemnity for the resulting extra costs.

8. Quality Control, In-Process Inspection, Final Inspection

8.1 The Contractor shall be obliged to carry out internal quality inspections on a continuous basis to guarantee flawless quality of the final product.

8.2 The Customer shall have the right to check or have a third party check, at normal business hours and by prior arrangement, the processing status and/or manufacturing progress of the ordered items and/or technical documentation at Contractor's premises. This shall also apply to subcontractors if the Contractor chooses to contract the provision of goods/services wholly or in part to third parties. The Contractor shall be obliged to transfer this obligation to its subcontractors.

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- 8.3** Both Customer and Contractor shall bear their share of personnel costs related to in-process inspections and/or final inspections. The proof of quality shall be provided by the Contractor. If in-process inspections and/or final inspections have to be repeated for reasons lying within the Contractor's scope of responsibility, the Contractor shall bear Customer's additional expenses for such repeated inspections.
- 8.4** In case the Customer finds out, by way of in-process inspections, that the order processing is behind schedule and the deadline at risk, the Customer will agree with the Contractor on suitable measures to ensure observance of the delivery date. Should this delay be caused by the Contractor, the Contractor shall bear any extra costs of these measures (e.g. personnel increase, excess work, extra shifts, subcontracting of work, etc.).
- 8.5** Should the Contractor miss the deadline due to negligent conduct and this lead to a penalty for delayed delivery for the Customer, the Contractor shall additionally have to pay in full Customer's penalty costs.
- 8.6** The execution or non-execution of in-process inspections/final inspections by the Customer shall not release the Contractor from its obligation of proper order fulfilment and its warranty obligations. The Customer reserves the right to place a claim at a later date.
- 8.7** Defects which are detected in the course of the final inspection shall immediately be remedied by the Contractor. Unless all defects are fully repaired, the Customer shall have the right to decline acceptance and to have the inspection repeated.
- 8.8** If goods/services cannot be accepted for justifiable reasons within an appropriate period of time after delivery and/or notice of defect, in particular if the Contractor failed to remedy defects in time, the Customer shall have the right to demand a reduction of the price or, in the event of defects which are not considered minor, to withdraw from the contract while retaining any claims for damages without having to grant an appropriate period of grace.
- 9. Passing of Risk**
- 9.1** The risk shall pass on to the Customer at the place of delivery/dispatch specified in the Purchase Order only.
- 10. Warranties, Guarantees**
- 10.1** Unless otherwise agreed, the Contractor shall provide warranty for the following: appropriate and state-of-the-art design which is suitable for the intended use, quality of workmanship, the agreed properties, functioning and performance, and the use of faultless and unused material for a period of 2 years (effective from the acceptance of the goods/services by the Customer). This warranty shall include that, within this period, the Contractor, at Customer's option, is obliged to either immediately replace at its own expense and risk (dismantling and mounting costs included) all parts which become unusable or defective due to defects of design, material, construction, functioning, or performance of its supplies at Customer's works or the place of installation of the final customer and/or compensates the Customer for the damages resulting from the uselessness and defectiveness. In urgent cases the Customer shall have the right, at Contractor's expense, to have defective parts repaired or replaced by own staff or by third parties at will. In the event of a replacement or repair the full warranty period commences anew at repeated start-up.
- 10.2** By accepting the Purchase Order the Contractor expressly declares that no rights whatsoever, in particular property rights of third parties, are connected with the subject of the Order. The Contractor undertakes and agrees to indemnify and hold the Customer harmless in respect of claims related to property rights by third parties and to fully compensate the Customer for any damage arising thereof.
- 10.3** In addition, the Contractor shall be liable without limitation for all damages caused by the Contractor.
- 10.4** The Contractor agrees that the Customer may cede without limitation Customer's rights in respect of warranty and guarantee to a final customer or a third party, if required.
- 10.5** The Customer shall be entitled to complain about clearly visible defects of the goods and/or services within 4 calendar weeks from delivery and/or acceptance, about hidden defects from the moment of detection, though. In case of goods which may remain in their packing until the moment of their use, defects which become visible on unpacking shall be considered hidden defects. Receipts of delivery by the Customer shall not be considered a waiver of claims in respect of defects or warranty.

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11. Substandard Goods

In case of substandard goods, which shall be returned at Contractor's expense and risk, the Customer shall be at liberty to either insist on a compensation delivery or to waive a compensation delivery and have any payments reimbursed. Transportation of any replacement goods shall be at Contractor's expense and risk. For any damages in excess thereof, the Contractor shall be obliged to pay full compensation.

12. Product Liability

12.1 The Contractor shall be liable without limitation, within the scope of application of the Product Liability Act, for any personal injury and damage to property of the Customer and/or its customer as regulated by law for end users.

13. Invoicing

13.1 All invoices, unless otherwise required, shall be submitted in duplicate and comply with the valid formal regulations and the specifications of the Austrian Accounting Act. Apart from the Purchase Order number they have to reference the individual order items according to the Purchase Order.

13.2 Performance invoices must be supported by suitable evidence. One invoice must not reference more than one Purchase Order.

13.3 Unless otherwise agreed, invoices shall only be made out after fully completed delivery at the date stated in the Purchase Order.

14. Payment

14.1 Unless otherwise agreed, payments shall be effected net 60 days after completed delivery and receipt of invoice, or within 30 days less 3% discount. If the delivery is followed by a notice of defect, the payment shall only be effected after satisfying elimination of the defect. C.O.D. shipments shall not be accepted.

14.2 Assignments must be approved in writing by the Customer.

14.3 Invoices for partial delivery shall only be acceptable if so specified in the Purchase Order.

14.4 The payment of invoices shall have no effect on any warranty claims and claims for damages by the Customer and shall by no means be considered as a confirmation of proper delivery. The payment of the purchase price shall not affect the right of subsequent claims for defects which may be detected after invoice payment only.

14.5 The Customer reserves the right to hold back payments in the event of complaints, warranty claims and any other claims asserted. The suspension of performance due to anticipatory breach pursuant to § 1052 ABGB (Austrian Civil Code) shall be excluded.

14.6 Unless otherwise specified in the Purchase Order, a financial retention of 10% of the total order value shall be considered agreed for the period of warranty/guarantee plus 60 days. This financial retention of 10% can be substituted by a bank guarantee if such a bank guarantee is attached to the invoice. This bank guarantee must be issued by a bank approved by the Customer. The Customer will also stipulate the wording of the bank guarantee.

15. Contractor's Documentation

15.1 All commercial and technical documents/data must be submitted to the Customer, in the specified number and in due time, in faultless and reproducible form, as well as good quality both in hardcopy and stored on a suitable data storage medium as a processible *pdf, *dxf, *dwg, *xls, *doc file, whatever is applicable.

15.2 If the Contractor fails to provide documents/data in the language specified in the Customer Order in due time, the Customer shall be entitled to have these documents/data translated into the specified documentation language at Contractor's expense.

15.3 The Contractor shall be obliged to provide, on its own accord and in due time, any additional documents/data which may not be explicitly listed in the Purchase Order but required for proper engineering, official licensing requirements and orders, maintenance or operation.

15.4 The full completion of the Purchase Order shall include the provision of all commercial and technical documents/data as specified in the Order. Periods of payment shall not start to run before the Purchase Order is completed in full and free of defects.

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15.5 All documents/data must reference the required and/or necessary order-related information as specified by the Customer. In the case of standard documents which apply to several types/sizes, the relevant type must be marked in a clear and reproducible way and the other types must be crossed out.

16. Order Documents

16.1 Any information attached to Customer's inquiries and Purchase Orders such as drawings, sketches, concepts, as well as samples, specimens, models, printing plates and the like remain the sole property of the Customer and must not be used for any other than the specified purpose without Customer's prior approval in writing. Such information must be returned without request to the Customer with the offer or after completed execution. The use of the information/Order for advertising purposes, which also includes technical and scientific publications, shall require the prior approval in writing by the Customer. In case of total plants which the Contractor provides significant parts for, the Contractor shall not be entitled to use such a total plant as a reference plant. The Purchase Order and all information, data, documents related thereto must be considered as business secrets and treated confidentially. The Contractor shall not be entitled to a remuneration for the preparation of offers, drawings and any other services it renders during the offer phase.

16.2 Order supplements with technical or commercial contents (documentations, attachments, guarantee condition and the like) form an integrated part of the Purchase Order.

16.3 In case of inconsistencies between the Order documents the following precedence shall apply:

- a. order text
- b. our specific technical and/or commercial documents
- c. our General Terms and Conditions of Purchase (TCP)

17. Place of Fulfilment

17.1 The place of payment is the registered office of the Customer.

17.2 The place of delivery is the agreed place of destination.

18. Rescission of Contract

Regardless of Customer's other rights, the Customer shall have the right to withdraw from the whole contract, without granting a period of grace, if

18.1 bankruptcy proceedings, composition proceedings, preliminary proceedings, or reorganisation measures are instituted on Contractor's assets or if the institution of bankruptcy proceedings is rejected for lack of assets

18.2 the Contractor commits its company to third parties or if the company passes on to third parties due to a testamentary disposition.

18.3 Contractor's company undergoes other significant changes, e.g. corporate changes.

19. Damages

19.1 The Contractor shall be liable for all damages caused by the Contractor, its vicarious agents or its subcontractors and shall always make full amends to the Customer. In particular, the Contractor shall be liable for all damages, regardless of the cause in law, resulting for the Customer from third-party claims due to a breach of contract by the Contractor.

20. Place of Jurisdiction

20.1 The place of jurisdiction for both parties shall primarily be Graz.

20.2 In addition, the Customer shall also have the right to sue at the Contractor's place of jurisdiction.

20.3 Austrian law shall apply to all contractual relations.

21. General

21.1 Unless otherwise agreed, Customer's Terms and Conditions of Purchase shall apply and Contractor's general terms and conditions of business shall expressly be excluded.

21.2 Material/information provided by the Customer shall remain Customer's sole property and must not be used for any other than the specified purpose.

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- 21.3** If individual conditions and clauses of these TCP are altered or completely or partially annulled, all other conditions and clauses of these TCP shall remain valid without restriction.
- 21.4** The provision of goods or services may be contracted wholly or in part to third parties only with the prior written consent by the Customer. Any subcontractors shall be named to the Customer.
- 21.5** Any alteration and/or amendment to the Order shall require a written agreement. In case of desired alterations and/or amendments which entail a price increase, the Contractor shall, prior to the execution of such alterations/amendments, present a binding supplementary offer to the Customer to obtain a written consent for the additional costs otherwise the costs shall not be borne by the Customer. The conditions of the main order shall also apply to repeat orders.
- 21.6** The Contractor guarantees the availability of the necessary spare and wear parts for a period of at least 10 years from acceptance of the goods.

22. Intellectual Property Rights in Information and Documents/Non-Disclosure

- 22.1** The Customer retains all intellectual property rights in and rights of use of all documents, data and information (in particular drawings, brochures, technical documents) prepared and provided by the Customer. Any use (in particular processing, execution, reproduction, distribution, public presentation, provision to others) of information and documents related to this Purchase Order shall only be permissible with the explicit consent of the Customer. All information and documents shall only be used for the specific purpose agreed upon at conclusion of the contract and/or in a subsequent agreement, if any.
- 22.2** In the event of an infringement of these intellectual property rights and/or the related provisions, the Customer shall have the right to claim a penalty of EURO 20,000.-- which shall not affect the right to claim further damages. The court's right to reduce or abate the penalty shall not apply. The Contractor shall be obliged to prove that it did not use the documents of the Customer.
- 22.3** All drawings, drafts, specifications, notices, and any other data prepared by the Contractor and handed over to the Customer shall be the sole property of the Customer. The Customer shall have the unreserved and transferable exclusive rights of exploitation in terms of time, place and contents inclusive of the right to reproduce, modify and use the supplied documents/information for further projects.
- 22.4** The Contractor shall, and shall procure that its employees, vicarious agents and subcontractors shall, keep secret any processes, data and other information related to the business area of the Customer and disclosed to the Contractor on the occasion of their cooperation. This non-disclosure agreement shall also be valid after a possible termination of the business contact between the Contractor and the Customer unless the Customer explicitly releases the Contractor from its obligation to confidentiality. The Contractor shall also bind its employees, vicarious agents and subcontractors to this obligation of confidentiality.

23. Property Rights to Documents provided by the Contractor

- 23.1** All and any data, documents, objects, certificates, records, and correspondence provided by the Contractor to the Customer in connection with the fulfilment of his order shall be provided free of any legal claims, i.e. unencumbered by third party rights (such as property rights, patent rights and the like).

24. Intellectual Property Rights

- 24.1** The Contractor shall be obliged to take the appropriate judicial measures to make sure that all data, project documentation and results of labour – irrespective of their nature (tangible or intangible) – provided by the Contractor to the Customer for his use are the sole property of the Contractor and may be used by the Customer unencumbered by third party rights and without any limitations regarding time or place.

25. Support with the Defence of Claims

- 25.1** Upon request, the Contractor is obliged to support the Customer without any additional compensation in defending any claim, enforcement and lawsuit resulting or ensuing from actions and/or omissions by the Contractor. Such support shall include - but not be limited to – the analyses and investigation of such claims, enforcements and lawsuits, the related consultation with the Customer, and giving testimony in favour of the Customer in any related lawsuit or dispute resolution.
- 25.2** The Contractor is also obliged to provide the Customer with the assistance of all persons and legal entities employed by the Contractor. The obligations and responsibilities stipulated in this article shall apply in addition to the other obligations and responsibilities set forth in this contract and shall neither limit nor weaken said obligations and responsibilities.

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25.3 All rights in and to the documents, drawings, materials or any other information, concepts, copyrights, patents and the like, provided by the Customer to the Contractor, as well as the right to register any related industrial property rights thereof or of any specific work results produced in connection with the order fulfilment shall remain the sole property of the Customer.

25.4 The Contractor undertakes to transfer gratuitously all property rights and/or intellectual property rights in work results and to provide all necessary documents and assistance required for acquiring the property rights.

26. Indemnification

26.1 The Contractor shall completely indemnify and hold harmless the Customer from and against any and all claims, demands, costs, expenses, liabilities, causes of action and damages of every kind and character (including lawyers' fees) which may be asserted against him by any third party in relation to circumstances which the Contractor is responsible for.

26.2 In case of a lawsuit or an imminent lawsuit against the Customer, the Contractor shall, upon Customer's request, take any measures necessary (at his own cost and expense) to indemnify and hold harmless the Customer from and against all claims or to achieve an amicable settlement. The Contractor shall align himself with the Customer in case of a possible lawsuit.

26.3 In addition, contract item 26 ("Support with the Defence of Claims") shall apply.

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