



# General terms and conditions of sale and delivery

## 1. General

- 1.1 These general terms and conditions (hereinafter referred to as "GC") apply to all sales and deliveries of machines from JNJ automation SA (hereinafter JNJ) to its Clients (hereinafter Client), except as otherwise provided by written agreement.
- 1.2 The contract is deemed concluded upon receipt of written confirmation from the Client that he accepts the order (order confirmation). The confirmation of order takes precedence over these GC that are deemed read and accepted by the Client at the conclusion of the contract. Any offer that does not have an acceptance period is without effect.
- 1.3 All agreements and legally relevant declarations of the parties to the contract must be in writing in order to be valid. Statements in text form, transmitted or stored through electronic media, are considered as written if this is specifically stipulated by the parties.
- 1.4 If any provision of these terms of delivery is ineffective in whole or in part, the parties will replace it with a provision having legal and economic effects as close as possible to those of the invalidated one. All other provisions shall not be affected in their validity in any way.

## 2. Scope of supplies and services

- 2.1 The supplies and JNJ services are exhaustively specified in the order confirmation and in appendices thereto. JNJ shall be entitled to make any changes which lead to improvements provided that such changes do not result in a price increase.
- 2.2 If the Client wants to make any changes to the contract, JNJ shall inform the Client without delay if the changes are still feasible and, if they are, about the effects they will have on the performance of services, prices and deadlines. No modification is possible for products already delivered and/or manufactured.

## 3. Plans and technical documentations

- 3.1 Brochures and catalogues are not binding JNJ. Information on technical documents is binding JNJ only in case of express warranties.
- 3.2 Each party shall retain all rights relating to the plans and technical documents that it transmits to the other. The recipient of these acknowledges rights and undertakes not to disclose this documentation to third parties, in whole or in part, until after obtaining the written authorization of the issuer. It shall only make use of this documentation in accordance with the purpose for which it was given to.

## 4. Requirements in the country of destination and protective devices

- 4.1 The Client must draw the attention of JNJ, at the latest at the time of the order, on the requirements and standards applicable to the execution of supplies and services, their operation, as well as the prevention of diseases and accidents.
- 4.2 In the absence of an agreement according to Clause 4.1, the supplies and services will meet the prescriptions and standards prevailing at the legal domicile of JNJ. Additional or different protective devices shall only be provided if they have been specifically agreed upon.

## 5. Prices

- 5.1 Unless otherwise agreed upon, all prices shall be deemed to be net from the factory, without packaging, in freely available Swiss francs (CHF), and without deduction of any kind. All incidental expenses are governed by Incoterms. Bank charges shall be borne by Client.
- 5.2 JNJ reserves the right to adjust the prices at any time and until the final execution of the contract in case the wage rates or the material prices vary between the time of the offer and the execution of the contractually agreed obligations. An appropriate price adjustment also arises if
- the delivery period is later extended for one of the reasons set out in Clause 8.4, or
  - the type and quantity of the agreed supplies or services have been modified, or
  - the documentation delivered by the Client does not correspond to the actual conditions or is incomplete and the material or the manufacture must be modified accordingly, or
  - laws, guidelines, principles of interpretation or application have

undergone a modification.

- 5.3 Commissioning, staff training and documentation are an integral part of the sales price unless otherwise stated.

## 6. Terms of payment

- 6.1 The Client shall make payment at JNJ's domicile, in accordance with the agreed terms of payment without deducting any discount, fees, taxes, contributions, customs duties or any other fees.

Unless otherwise agreed upon, the price is paid by instalments:

- 10% at the order confirmation
- 40% at the beginning of manufacture
- 40% before delivery
- the balance within 30 days after delivery and/or commissioning

The obligation to pay is fulfilled to the extent that the amount in Swiss francs (CHF) has been made freely available to the JNJ's bank account. When the confirmation of sale authorizes payment by bill of exchange or by letter of credit, the Client bears the discount, taxes and collection fees, which means all costs related to the opening, notification and confirmation of a letter of credit.

JNJ reserves the right to request the full payment of the order before delivery if the conditions require it. Therefore, payments can be staggered as follows: 20% on order, 40% at the beginning of manufacture and 40% before delivery.

- 6.2 Payment deadlines, 14 days for down payments and 30 days for the final invoice, must be respected, even if the transport, delivery, assembly, commissioning or receipt of the supplies or services have been delayed or are impossible for reasons due to no default of JNJ, or if non-essential parts are missing, or if additional work is necessary that does not prevent the use of the machine.

- 6.3 If the down payments or the contractually agreed securities on conclusion of the contract are not provided in accordance, JNJ is entitled to maintain the contract or to withdraw from it, and in both cases, to claim damages (art. 214 al 3 CO).

If the Client is in default for any of its payments, for any reason, or if circumstances after the conclusion of the contract give JNJ serious fear that the Client will not execute fully or on time, JNJ shall be entitled, without prejudice to their legal rights, to suspend the performance of the contract and to retain supplies ready for dispatch until a new agreement has been reached on the terms of payment and delivery, and that JNJ has obtained sufficient security. If no agreement is reached within a reasonable period of time, or if JNJ does not obtain sufficient security, it shall be entitled to terminate the contract and to claim damages.

- 6.4 If the Client fails to comply with the payment deadlines, he shall be obliged, without formal notice, to pay, from the date of the agreed due date, an annual interest of 5% as well as administrative and reminder fees.

- 6.5 The offsetting of the Client's claims of any kind with JNJ claims is excluded.

## 7. Retention of ownership

JNJ remains the owner of the entire delivery until full payment is received in accordance with the contract. The Client shall be required to participate in all useful measures to protect the property title of JNJ; in particular, from the conclusion of the contract, he authorizes JNJ to enter the reservation of title in the corresponding register, books or other similar documents, all in accordance with relevant laws of the place of destination, and to fulfil all corresponding formalities, at Client's costs. The Client will store the delivered articles at his costs for the duration of the retention of title and, on behalf of JNJ, insure against theft, breakage, fire, water and other risks at his own expense. In addition, he shall take all appropriate measures to prevent any infringement of JNJ's property rights.

## 8. Delivery

- 8.1 The delivery time which is mentioned in the order confirmation but does not constitute a mere indication, starts as soon as the contract is entered into, all official formalities such as import, export, transit and payment permits have been completed, payments due with the order have been made, any agreed securities given and the main technical points settled.

8.2 Compliance with the delivery time is conditional upon Client's fulfilling of its contractual obligations.

8.3 If JNJ notices that it will not be able to deliver the machine at the agreed deadline, it must announce it without delay to the Client. A new deadline must be announced by JNJ. The delivery time shall be deemed to be observed if by that time JNJ has sent a notice to the Client informing that the supplies are ready for dispatch.

8.4 The delivery time is reasonably extended:

- if the information required for performance of the contract is not sent to JNJ in time, or if the Client subsequently modifies it thereby causing a delay in the delivery of supplies or services;
- if hindrances occur affecting JNJ, the Client or a third party, which JNJ cannot remove, despite using the required attention. Such hindrances include epidemics, mobilization, war, civil war, terrorist acts, riot, political unrest, revolutions, acts of sabotage, major disturbances in the exploitation of the company, accidents, labour disputes, late or defective delivery of necessary raw materials, semi-finished or finished products, the need of scrap important work pieces, official actions or omissions by any State authorities or supranational embargoes, impediments to transport, fires, explosions, natural phenomena;
- if the Client or a third party is behind schedule with work it has to execute, or with the performance of its contractual obligations, in particular if the Client fails to observe the terms of payment.

8.5 Delays in delivery cannot give rise to damages, withholding or cancellation of the contract and orders in progress. However, if the delivery time is extended to more than 6 months for a reason attributable to a fault of JNJ, the contract may be terminated at the request of one party or the other and the advances already paid by the Client him will be returned.

## 9. Passing of risk, shipping, transportation and insurance

9.1 The provisions of the Incoterms apply for risks, shipping, transport and insurance.

9.2 The Client shall take out insurance against risks upon the delivery is considered as being made.

## 10. Procedure for receipt of supplies and services

10.1 JNJ shall inspect the supplies and services, as far as being normal practice, before shipping. The Client may require further verification only if this has been specially agreed and at his own expense.

10.2 In case of export, the Client is given the opportunity to validate the entire machine in the JNJ workshops before delivery.

10.3 The Client shall inspect the supplies and services within a reasonable period and shall immediately notify JNJ of any deficiencies in writing. Otherwise, the supplies and services shall be deemed to have been accepted.

10.4 The Client shall give JNJ the possibility of doing so, JNJ shall remedy as soon as possible the deficiencies that are communicated to it according to Clause 10.3. After remedy of such deficiencies, a taking-over procedure for supplies will take place at the request of the Client or JNJ, according to Clause 10.5.

10.5 Subject to Clause 10.4, the carrying out of a taking-over procedure, as well as laying down the conditions relating thereto, need a special agreement. Unless otherwise stated, the following shall apply:

- JNJ shall advise the Client as soon as possible of the execution of taking-over procedure so that the Client or its representative can attend.
- In case of insignificant deficiencies, in particular those which do not substantially interfere with the efficient functioning of supplies or services, the Client shall not be entitled to refuse the acceptance of the latter. JNJ shall remedy such deficiencies without delay.
- In case of significant deviations from the contract or serious deficiencies, the Client shall give JNJ the possibility of remedying these within a reasonable time. Thereafter, a new taking-over procedure shall take place.

10.6 The taking-over shall also be deemed pronounced:

- if the Client does not participate in the take-over procedure despite prior invitation
- if the taking-over procedure cannot be carried out on the due date for reasons beyond JNJ's control
- if the Client refuses the receipt without right;
- as soon as the Client uses JNJ supplies or services.

## 11. Warranty, liability in case of defects

### 11.1 Duration of the warranty

The warranty period is 12 months. It starts when the supplies leave the factory or upon the completion of commissioning insofar as JNJ takes care of this also, or upon receipt of the supplies and services possibly agreed. If the shipment, the completion of commissioning or the carrying out of the taking-over procedure is delayed for reasons beyond JNJ's control, the guarantee period shall end not later than 18 months after the JNJ's notice informing the Client that the supplies are ready for shipment. The repair, modification or replacement of parts during the warranty period shall not in any way be deemed a reason for extension of the warranty period.

The right to the warranty expires prematurely if the Client or a third party undertakes modifications or repairs or if the Client, in case of defect, does not immediately take all appropriate steps to reduce the resulting damage and give JNJ the possibility of remedying such defect.

### 11.2 Liability for defects in material, design or manufacturing

Upon written notice of the Client, at the latest within 10 (ten) calendar days of their discovery, JNJ undertakes, at its choice, to repair or replace, as quickly as possible, all items of its supplies which are proven to become defective prior to the expiry of the guarantee due to bad materials, flawed design or poor manufacturing. Replaced parts shall become JNJ's property unless expressly renounced. In accordance with the principle of proportionality, JNJ shall bear the costs arising from the remedying, insofar as these do not exceed the customary costs of transport, labour, travelling and accommodation, as well as dismantling and assembly of the defective parts. Thus, for Clients with machine located more than 350 KM from Romont (Switzerland), the guarantee covers the replacement of defective parts and the service, but not the costs of travel or board and lodging and other petty expenses for specialists sent by JNJ, which must be borne by the Client.

### 11.3 Liability for promised qualities

Promised qualities are only those which have been expressly specified as such in the order confirmation or in the specifications. They are valid until the expiry of the guarantee period at the latest. If a take-over procedure has been agreed, the promised qualities shall be deemed to have been fulfilled as soon as the proof of these qualities has been provided during the take-over procedure.

If the promised qualities are not or only partially achieved, the Client may require JNJ to carry out the improvements without delay. The Client shall give JNJ the necessary time and possibility of doing so.

### 11.4 Exclusions of liability due to defects

Excluded from JNJ's guarantee and liability are wear parts and consumables and all deficiencies which cannot be proved to have their origin in bad materials, flawed design, or poor manufacturing, such as damages due to natural wear and tear, insufficient maintenance, failure to observe the operating instructions, excessive solicitations, the use of any unsuitable materials, chemical or electrolytic action, manufacturing or assembly work not undertaken by JNJ, as well as resulting from other reasons beyond JNJ's control. Engines and all electrical and electronic components are covered by the manufacturer's guarantee for these devices. Defects due to moisture absorption and faulty electrical connections are not covered by the guarantee.

### 11.5 Supplies and services of subcontractors

For supplies and services of subcontractors requested by the Client, JNJ assumes guarantee only to the extent of the guarantee given by the subcontractors.

### 11.6 Completeness of guarantee rights

The rights and claims of the Client due to defects in materials, design or manufacture, as well as those arising from the lack of specified qualities, are limited to those specifically mentioned in Clauses 11.1 to 11.5.

If the Client notifies JNJ a defect within its liability without however being apparent, the Client shall reimburse JNJ the costs of work as well as compensation for expenses and other costs.

If a fault giving rise to a guarantee is admitted, Clients may not claim compensation for production losses, operating losses, loss of business or any other direct or indirect loss.

11.7 Liability due to ancillary obligations

JNJ is only liable to the extent of intentional fault or serious misconduct, as far as the Client makes claims arising out of erroneous advice or data or the breach of any other ancillary obligation.

12. Service and Maintenance

12.1 Consumer supplies (grease, sprays, etc.) and wear parts are the Client's responsibility, as are spare parts that are not under warranty.

12.2 The service of a machine is organized in agreement with the JNJ service department and the Client. The latter agrees to strictly and carefully observe the maintenance provided in the user manual. JNJ's service department is available for further information.

13. Termination of the contract by JNJ

The contract shall be adapted appropriately if unforeseen events considerably change the economic effect or the content of the supplies or services, or significantly affect the activities of JNJ, or if the execution subsequently becomes impossible. In so far as such an adaptation is not economically justifiable, JNJ shall be entitled to terminate the contract or the parts affected thereby.

If JNJ intends to use its right of termination and as soon as it is able to recognize the consequences of the events, it shall immediately inform the Client. This applies even if an extension of the delivery time has initially been agreed. In case of termination of the contract, JNJ shall be entitled to request the payment of supplies and services already provided. The Client cannot claim any compensation for such termination of the contract.

14. Termination of the contract by the Client

In the event of unilateral termination by the Client on grounds other than those provided for in the contract before delivery of the merchandise, the Client must repay JNJ all amounts already committed for the execution of the contract, specifically including: orders placed by JNJ with its suppliers, any studies it has carried out, production hours worked and, more generally, all costs and/or penalties already incurred by the time notice of termination is received. JNJ must present the Client with documentary proof of the amounts of expenses incurred for production of the order. The expenses listed above grant entitlement to reimbursement by the Client on the basis of the documents presented, plus a ten percent administrative charge. If the sum of the expenses confirmed and incurred by JNJ is less than the amount of any advance payments made by the Client, JNJ undertakes to return the outstanding balance to the Client's account.

15. Export control

The Client acknowledges that supplies may be subject to Swiss and / or foreign regulations and regulations on export control, and that it is forbidden to sell, rent, transmit them in any way or to use them for any other purpose than the one agreed, without authorization for export or re-export from the competent authority. The Client undertakes to respect such provisions and regulations. He is aware that these can change and are applicable according to the valid contract.

16. Data protection

In the performance of the contract, JNJ is entitled to process the personal data of the Client. In particular, the Client agrees that in the context of the management of commercial relations, JNJ transmits such data to third parties in Switzerland or abroad.

17. Intellectual Property Right

JNJ retains all intellectual property rights related to products, product programs and software that it has developed (copyright, trademarks, etc.). No intellectual property rights are assigned to the Client, except the right to use the products in accordance with the sales contract.

The Client does not acquire any rights to the tools, drawings, software, process programs, methods or any other know-how developed by JNJ and to which the Client has been given access. These remain the property of JNJ.

The Client may not reproduce, copy, modify, adapt, compile them, either partially or totally. He also may not communicate them and transmit them to third parties, directly or indirectly, for whatever reason, in any form and for any cause whatsoever.

18. Exclusion of all further responsibilities on JNJ's part

All cases of breach of contract and the legal consequences as well as all claims on the part of the Client, regardless on what legal basis, are exhaustively covered by these General Terms and Conditions. If there are claims by the Client arising from the contract or its non-conforming performance, the total amount of these claims is limited to the price paid by the Client. This in particular refers to all claims for restitution, price reduction, withdrawal from or termination of the contract, which are not expressly reserved by it. Under no circumstances the Client may claim compensation for damages that are not related to the object of delivery, such as production losses, operating losses, business losses, reminder fees, loss of earnings and any other direct or indirect damage. Liability for the replacement of claims of third parties, claimed against the Client for reasons of infringement of immaterial property rights, also has no effect.

This exclusion of liability does not apply in cases of intentional fault or serious misconduct by JNJ; however, it applies to auxiliary personnel.

This exclusion of liability does not apply as far as it is contrary to compulsory law.

19. JNJ's right of recourse

If, through actions or omissions of the Client or of its auxiliary personnel, personal injury or damage to the property occurs and if, for this reason, the responsibility of JNJ is engaged, then the latter shall be entitled to take recourse against the Client.

20. Jurisdiction and applicable right

20.1 These General Terms and Conditions are subject exclusively to Swiss law both for their interpretation and for their execution. The rules of the Vienna Convention on Contracts for the International Sale of Goods are expressly excluded.

20.2 Only the courts of the Canton of Fribourg (Switzerland) are competent in the event of litigation of any kind or disputes relating to the formation and execution of the order. The same applies for the foreign Client.

20.3 In case of litigation and before beginning legal proceedings, each party undertakes to meet the other, in a neutral place agreed between them, in order to try to reach an amicable agreement.

*Upon signature of the offer or confirmation of the order, these general conditions of sale and delivery are deemed read and accepted:*

Date : \_\_\_\_\_

Client's signature : \_\_\_\_\_

Stamp



JNJ automation SA  
Impasse de la Maladaire 5  
Case postale 208  
CH-1680 Romont  
Switzerland

Tel: +41 26 656 9000  
info@jnj.swiss  
www.jnj.swiss