

General Terms and Conditions of Coratec AG, CH-4617 Gunzgen SO

1. Preamble

- 1.1. These General Terms and Conditions of Coratec AG shall govern all contracts for work and services and contracts of sale resulting from the operations of Coratec AG in as far as Coratec AG contracts as supplier or seller.
- 1.2. These **General Terms and Conditions** shall form **part of the contractual negotiations** and shall therefore be incorporated into the specific contract of sale or contract for work and services if Coratec AG has generally made known its General Terms and Conditions to the customer for the works and services or to the buyer ("the Customer") before forming the contract, be it through notices served on the Customer or printed in catalogues or in documentation, on quotations, acknowledgments, delivery notes or invoices.
- 1.3. An **amendment or annulment** of these **General Terms and Conditions** must be made in writing and must explicitly be identified as such. If individual agreements between the Contracting Parties or assurances given in the individual case, namely in quotations, acknowledgments or delivery notes of Coratec AG, should contradict these General Terms and Conditions, the individual agreements shall have priority. If these General Terms and Conditions should contradict the Customer's General Terms and Conditions, the General Terms and Conditions of Coratec AG shall have priority, so that the Customer's General Terms and Conditions shall have no validity.
- 1.4. These General Terms and Conditions shall be valid for an indefinite period of time and shall therefore apply to all **follow-up orders**, as long as the Contracting Parties have not made a contrary written agreement.

2. Product information / product prices

- 2.1. All details and information in catalogues or price lists of Coratec AG shall only be binding if a contract for work and services or a contract of sale contains an explicit reference to them.

3. Formation of the contract / effective date

- 3.1. Coratec AG shall send its written quotations by post, by fax or by e-mail. The same applies to any acknowledgments of orders. If the Customer should request deliveries, products, work or services that are not contained in the quotation or acknowledgment of Coratec AG, an additional charge shall be made for such items.
- 3.2. The quotations sent by Coratec AG shall be valid for 30 days in as far as nothing else has been agreed in writing. At the end of this period, Coratec AG shall no longer be bound by its quotation.
- 3.3. All documents and samples provided with the quotation shall remain the property of Coratec AG. Third parties must not be allowed to view quotation documents without the consent of Coratec AG.

- 3.4. The Customer shall accept quotation sent by Coratec AG by notifying Coratec AG of this acceptance within the said time limit, either verbally or in writing and sent by post, by fax or by e-mail. The time that notice of acceptance is given, the time of posting or the time that the fax or e-mail was sent shall be authoritative.

4. Amendments and adjustments to the contract

- 4.1. If the Customer wishes for an amendment or an adjustment to the contract or a modification of the technical specifications for the item to be delivered, Coratec AG shall notify the Customer, on written application, whether such a change is possible and what effects this will have on the execution of the order, the dates and the price. Coratec AG shall be bound by its offer to change the order and thus to amend the contract for a period of 3 weeks. The amendment cannot apply to products that have already been delivered.

5. Terms of payment, late payment

- 5.1. All prices agreed by contract are exclusive of value added tax and shall be quoted ex factory / ex works without packaging, transport, taxes, charges (particularly customs duty) and inspection expenses, as long as nothing to the contrary has been agreed. All costs for packaging, transport, customs duty, trucks, trade fairs and all other delivery expenses shall consequently be borne by the Customer.
- 5.2. If no price was agreed on the formation of the contract, the usual market price shall be charged for the item in question.
- 5.3. The prices have been calculated on the basis of the monetary values, wages and costs of materials valid on the date of the quotation or on the effective date. If there should be any changes during the term of the contract, Coratec AG reserves the right to adjust the prices to reflect such changes.
- 5.4. Coratec AG's invoices shall be due for payment within 30 days net as from the date of the invoice (with the exception of special agreements). The Customer shall be retrospectively charged for any unjustified deductions. Irrespective of the means of payment, payment shall not be deemed remitted until the full invoice amount has irrevocably been credited to Coratec AG's account. Complaints shall not entitle the Customer to withhold payments.
- 5.5. At the end of the aforesaid time allowed for payment the Customer shall be in default without a reminder being required. The Parties shall enter into a contractual agreement concerning the interest rate. In the absence of such an agreement the interest rate shall be 9% per annum.
- 5.6. In the case of late payment Coratec AG, after giving written notice, may suspend all outstanding deliveries until payment has been received. If the Customer is more than two months late in remitting payment that has become due, Coratec AG may rescind the con-

tract by giving the Customer written notice and claim compensation from the Customer for the damage incurred. Coratec AG, however, shall not be liable for damages due to rescinding the contract.

- 5.7. Coratec AG shall remain the owner of the item to be delivered until it has received the full payment due under the contract. Consequently on the effective date Coratec AG shall be authorised to enter the reservation of title into the official register at the Customer's expense. The Customer undertakes to settle all formalities in this respect.

6. Models, tools and equipment

- 6.1. **The Customer must indemnify and hold Coratec AG harmless against all claims resulting from an infringement of patents, trade marks or other intangible property rights in as far as such claims result from the production of the items to be delivered due to the use of a specification, a drawing, a sample, a model, a special tool or equipment provided by the Customer.**

7. Drawings and descriptions

- 7.1. If either of the Parties provides the other Party with drawings and technical documents concerning the item to be delivered or its production before or after the effective date, these shall remain the property of the Party who provides them.
- 7.2. Coratec AG is not obliged to provide manufacturing drawings for the items to be delivered or for spare parts.
- 7.3. If either of the Parties receives drawings, technical documents or other technical information, it may only use them without the consent of the other Party for the purposes for which they were provided, such as the assembly, installation and maintenance of the items to be delivered. If the other Party has not given its consent, they may not be used for other purposes nor may they be copied, reproduced or made available or disclosed to third parties.

8. Production samples

9. Delivery / shipping, late delivery

- 9.1. The delivery shall be effected at the Customer's expense and at the Customer's risk. If transport insurance is taken out on the Customer's wishes, the Customer shall bear the resulting costs.
- 9.2. Only the delivery dates which Coratec AG specifies in writing shall be binding. These delivery dates shall be extended by a reasonable amount of time if the Customer retrospectively alters the order or in the case of hindrances which are beyond the control of Coratec AG, such as late delivery by one of Coratec AG's suppliers or force majeure. Coratec AG shall notify the Customer if there are any signs that the delivery dates specified in writing will be delayed. The Customer shall only have the right to set a reasonable extended deadline in the case of binding delivery dates. After their

expiry the Customer may rescind the contract within three days in respect of the part that has not been performed. However, the Customer shall have no claims to damages due to late delivery.

9.3. If the Parties have agreed on a delivery period by whose expiry delivery must be effected, instead of a fixed delivery date, this delivery period shall commence effective from the date on which Coratec AG receives the Customer's order or effective from the date on which the contract is concluded, whichever is later.

9.4. If the consignment is not delivered by the binding delivery date or within the binding delivery period in accordance with clauses 9.2. and 9.3., the Customer shall be entitled to claim liquidated damages as from the latest date by which delivery was to have been effected. The liquidated damages are fixed at 0.5% of the price of the work or services or of the purchase price for each full week of the delay. The total sum of the liquidated damages, however, shall not exceed 7.5% of the price of the work or services or of the purchase price. If only part of the delivery is delayed, the liquidated damages shall be determined on the basis of the price of the work or services or of the purchase price which corresponds to the part of the consignment that could not be used for its intended purpose due to the delay. The Customer shall forfeit its claim to the payment of liquidated damages if it does not assert this claim within one month from the date when delivery should have been effected.

9.5. Coratec AG has the right to make part-deliveries and to provide parts of the works and services.

10. Packaging

10.1. If the Customer has to provide the packaging material under the terms of the contract, the Customer must supply this packaging to Coratec AG in good condition at the time and in the place specified by Coratec AG.

10.2. When the consignments arrive the Customer shall verify whether they are in accordance with the details on the delivery note at the time of receipt in terms of their condition and volumes. The Customer must immediately notify Coratec AG of all discrepancies or possible claims against the forwarding agent.

11. Place of performance / passage of risk / force majeure

11.1. If nothing to the contrary has been expressly agreed, the place of performance shall be where Coratec AG has its principal place of business.

11.2. The risk of the destruction, loss or deterioration of the consignment and the price risk shall pass from Coratec AG to the Customer on the delivery of the goods, on the despatch of the goods or when the goods are handed over for transport.

11.3. Coratec AG has the right to suspend the performance of its contractual obligations without being liable for damages if performance is made impossible or unreasonably difficult on grounds of force majeure, such as industrial dispute and all circumstances that are independent of the will of the Parties such as fire, military conflict, weather catastrophes, restrictions on the energy supply etc. and defective or delayed delivery by subcontractors as a result of the circumstances set out in this clause.

11.4. Coratec AG shall immediately notify the Customer in writing if such circumstances occur and when they come to an end.

11.5. If the Customer is prevented from performing its contractual obligations due to force majeure, the Customer must compensate Coratec AG for the expenses incurred in storing, securing and protecting the consignment.

12. Warranty, inspection and notice of complaints

12.1. If Coratec AG has an obligation under warranty, this shall extend to the performance due under the contract. The only warranted characteristics are those that have been indicated as such in the quotations and acknowledgments. Coratec AG only gives a warranty against defects and faults in contractual products or their parts which demonstrably occur as a result of poor material or faulty fabrication. Coratec shall not be liable for defects caused by materials provided or specified by the Customer.

12.2. The warranty shall at all events end 1 year after delivery / surrender or acceptance of the contractual items.

12.3. Coratec AG has the right to rectify any defects through subsequent improvement or by effecting a substitute delivery. The maximum compensation shall be limited to the values invoiced by Coratec AG.

12.4. In as far as no particular procedure has been agreed for acceptance, the Customer must inspect the products itself as soon as they have been delivered and before any processing or assembly (inspection period). Coratec AG must be notified of any defects without delay with an exact description. If the Customer fails to notify Coratec AG of the defects within **two weeks** of delivery (complaint period), the products shall be deemed free of defects in re-

spect of all their functions and the consignment shall be deemed approved. Hidden defects must be notified immediately after they have been discovered. Otherwise the contractual items shall also be deemed approved as regards these defects.

13. Liability

13.1. Coratec AG shall not be liable for any further damage (outside the scope of the warranty), in as far as this is permitted by law. This particularly applies to all types of damage such as direct and indirect damage, consequential damage as a result of defects and Coratec AG's liability in relation to auxiliary personnel and any subcontractor it may engage.

14. Duty to provide information

14.1. The Contracting Parties shall inform each other in good time about hindrances which might impede performance in accordance with the terms of the contract or lead to solutions that are inexpedient.

15. Engagement of a subcontractor

15.1. Coratec AG has the right to engage a subcontractor to produce the work and to commission the subcontractor with part of the work or the entire work.

15.2. Coratec AG shall not be liable for the subcontractor as an auxiliary worker.

15.3. Coratec AG shall assign any rights due to defects vis-à-vis the subcontractor to the Customer under the main contract so that the Customer may directly assert its rights against the subcontractor.

16. Place of jurisdiction and applicable law

16.1. **The place of jurisdiction for all litigation in connection with the contract shall be Gunzgen SO/Switzerland, where CORATEC AG has its principal place of business, in as far as the Federal Act on Civil Jurisdiction (*Bundesgesetz über den Gerichtsstand in Zivilsachen - GestG*) does not make it mandatory for the place of jurisdiction to be elsewhere. Coratec AG, however, shall have the right to bring an action against the other Contracting Party in the place where it has its principal place of business or place of residence.**

16.2. All contracts that Coratec AG forms with third parties who do not belong to its company shall be governed by the substantive law of Switzerland. The Vienna Sales Convention shall not apply.