

manroland sheetfed GmbH

General Conditions of Delivery



Based upon the United Nations Convention on Contracts for the International Sale of Goods

1. General

1.1 These general conditions (hereinafter referred to as "General Conditions") shall apply together with the specific conditions of the supply contract (hereinafter the "Supply Contract") individually or together with these General Conditions referred to as "Contract" between the purchaser (hereinafter referred to as "Purchaser") and manroland sheetfed GmbH (hereinafter referred to as "manroland") entered into by the Purchaser and manroland (hereinafter, the "Parties") in connection with the supply of manroland's equipment (hereinafter referred to as "Goods" or "Equipment").

1.2 In case of a contradiction between the General Conditions and the specific conditions of the Supply Contract, the specific conditions shall prevail.

2. Offers and Execution of Contract

2.1 All offers shall be binding on manroland upon confirmation in writing of manroland.

2.2 Technical particulars and marketing materials and data on weights, performance, operating cost, etc. shall not be binding unless expressly stated in writing as a condition of the supply. Particular requirements of the Purchaser, e.g. regarding the printing material, the jobs to be printed or the machine performance shall only be binding if stated and accepted in writing by manroland.

2.3 The General Conditions shall also be deemed to be accepted by the Purchaser whenever the latter accepts Goods supplied and/or services rendered by manroland.

2.4 Other terms and conditions shall not be incorporated into the Contract without the written and express consent of manroland. No terms and conditions appearing on the Purchaser's order and/or documents that are additional to or different from the Contract shall be binding upon manroland unless specifically agreed to by manroland in writing. Receipt by manroland of the Purchaser's order or the Purchaser's confirmation of manroland's order acknowledgement without manroland's objections to the terms and conditions of the Purchaser, shall not constitute acceptance by manroland of such terms and conditions.

2.5 Oral undertakings, representations and warranties are not binding unless confirmed by manroland in writing.

3. Extent of Supply

3.1 The Supply Contract shall be conclusive for the extent of supply. Additional understandings shall be subject to the written confirmation of manroland.

3.2 It is agreed that any information relating to the supplied Goods and its use, such as weights, delivery terms, dimensions, capacities, prices, colours and other data contained in marketing materials, catalogues, prospectuses, circulars, advertisements, illustrations, price-lists of manroland or its sub-suppliers, shall not take effect as terms of the Contract unless expressly referred to in the Supply Contract.

3.3 manroland reserves the right to apply changes in technical design in so far as such changes are to be considered standard equipment at the time the machinery is delivered.

3.4 Electro technical material shall comply with the conditions issued by the Association of German Electrical Technicians (*Verband Deutscher Elektrotechniker*). In all other respects quality and dimensions shall be determined according to DIN norms, issued by the German Institute for Standardization (*Deutsches Institut für Normen*) or EN norms, issued by CEN

(European Committee for Standardization) and CENELEC (European Committee for Electrotechnical Standardization)

3.5. If the supplied Goods are to be used outside Germany, safety devices shall be supplied as agreed upon.

3.6. manroland shall not be obliged to check for correctness of any documents submitted or data provided on the part of the Purchaser. In particular, manroland shall not be liable for any errors, omissions or faults contained therein.

3.7. If and to the extent agreed, manroland shall provide information and documents which are necessary to permit the Purchaser to erect, commission, operate and maintain the supplied Goods. manroland shall, however, not be obliged to provide manufacturing or workshop drawings for the supplied Goods or for the spare parts.

3.8 Unless provided to the contrary in the General Conditions, the Purchaser does not acquire any intellectual or other property rights in software, drawings, technical information and data (hereinafter referred to as "Information"), which may have been made available to the Purchaser. manroland also remains the exclusive owner of any intellectual or industrial property rights relating to the supplied Goods and the Purchaser shall at all times be prohibited from performing reverse engineering on the Goods. Any Information received by the Purchaser shall not, without the consent of manroland, be used for any other purpose than the erection, commissioning, operation or maintenance of the supplied Goods. In particular the Purchaser shall not disclose any Information to any third party without the express prior written consent of manroland, unless the Purchaser is compelled to disclose by law or court order. In these cases, the Purchaser shall give manroland notice as soon as possible about the need to disclose information and the grounds for such disclosure.

3.9. manroland grants the Purchaser the limited license to use the software which is part of the Goods supplied hereunder by manroland, according to the Supply Contract. This right shall be unlimited in time, non-exclusive, non-sub licensable and transferable to third parties only as part of a sale of the entire Equipment, except with respect to software of which manroland is licensee of such software and such license does not allow manroland to sublicense such rights to the Purchaser. manroland remains the owner of the property right authorization over the software.

3.10. The Purchaser may neither modify, process nor integrate the software into other systems without the written approval of manroland. Unauthorized modifications to the software programs may disable built-in safety functions. manroland shall not be responsible for hazards or damages resulting from such unauthorized modifications, nor from intellectual property rights' violations stemming there from. The Purchaser shall indemnify and hold manroland harmless from any possible claims by third parties pertaining to this subject.

3.11. The Purchaser may maintain a security copy of the software in respect of which manroland also reserves its rights.

4. Prices

4.1. The prices do not include VAT. Any taxes or other dues, levies or charges payable in the Purchaser's country or in the country of destination in connection with the deliveries made (hereinafter referred to as "Local Taxes"), shall be borne by the Purchaser, even if the law

in force in Purchaser's country or in the place of destination of the Goods provides for manroland's responsibility for the payment of such Local Taxes or require that such Local Taxes be withheld from payments to manroland; in any such case, the prices shall be adjusted accordingly, so that the manroland receives payment net from Local Taxes.

4.2. Unless otherwise agreed the prices shall be valid for delivery EXW manroland' site inclusive of packing, but exclusive of freight, erection installation and commissioning, plus value added tax, if applicable.

4.3. The prices are calculated on the basis of the costs prevailing on the date of the execution of the Contract. manroland shall be entitled to adjust the prices in the event of changes in the material prices, wages, freight costs, or other cost factors.

5. Terms of Payment

5.1 All payments, without any deduction, shall be made on the due date to manroland's free and unrestricted disposal in the contractually agreed currency and without any deduction whatsoever. Any bank fees and charges for the monetary transactions and/or for issuing the agreed payment securities shall be borne by the Purchaser. The value added tax shall be payable upon receipt of invoice unless the advance payments are liable to tax, in which case it shall be payable pro rata on the dates of payment agreed upon. If payment by bills of exchange has been agreed upon, such bills of exchange will only be accepted subject to cash payment.

5.2. The Purchaser shall not be entitled to make any deductions from the purchase price or to withhold any part of the purchase price by way of set off or otherwise save in respect of claims awarded by a competent arbitral tribunal or court pursuant to the Choice of Forum Clause or expressly acknowledged in writing by manroland.

5.3. In the event that payment of any part of the purchase price is not made to manroland - without being obliged to send a reminder and without prejudice to other rights and remedies in law or in contract - manroland shall be entitled to:

- without any notice whatsoever charge interest on the amount unpaid. Interest will be charged at the rate of 7 percent points per annum above the then prevailing European Central Bank Minimum Bid Rate for main refinancing operations plus value added tax, if any, for the time being until the date the amount outstanding is paid; and/or
- without any notice whatsoever suspend the performance of the Contract and/or.
- after giving the Purchaser notice, accelerate all payments provided for in the Supply Contract and seek the collection of the entire debt, including the payments represented by bills of exchange with later maturity dates, which shall also include the charges due under item a) above.

5.4. If it becomes apparent after the execution of the Contract that manroland's entitlement for payment is at risk, manroland - without prejudice to manroland's other rights and remedies - shall be entitled to (i) an appropriate payment security from the Purchaser, by means of bank guarantee issued under terms approved by manroland at its sole discretion, or other payment security acceptable to manroland, as condition precedent to the delivery of the supplied Goods, or (ii) terminate the Contract.

6. Reservation of Title

- 6.1 The supplied Goods shall remain the property of manroland until all claims arising in connection with the Contract have been fully settled. manroland shall retain title over the Goods even if the Purchaser's payment obligation has been transferred to a current account of the Purchaser with manroland
- 6.2 If the Purchaser fails to comply with the Contract, particularly if it is in default with its payment obligations and/or the balance of a current account to which such payment obligation has been transferred to manroland shall be entitled to terminate the Contract and the Purchaser shall be liable vis-à-vis manroland for the repossession of the supplied Goods. The Purchaser shall be liable for any damage arising in connection with the return of the supplied Goods. In the event of the supplied Goods having been used, manroland - without prejudice to other rights and remedies - shall be entitled to charge the Purchaser a depreciation amounting to twenty-five (25) % of the net purchase price for the first half year of use and five (5) % for any further half year commenced.
- 6.3 If the law of the country to which the Goods are supplied does not permit a reservation of title but allows manroland to reserve other comparable rights; manroland shall be at liberty to exercise all such rights. The Purchaser shall undertake at its cost, all such measures as are necessary to render effective and maintain these rights to the supplied Goods.
- 6.4 During the period of reservation of title or any other right in accordance with the preceding Clause the Purchaser shall insure the supplied Goods against all relevant risks, with the provision that manroland shall be entitled to all rights arising out of the insurance contract. The insurance policy and the receipts for the premiums shall be presented to manroland upon request.
- 6.5 The Purchaser shall take all measures to ensure, that manroland's title or comparable security rights are in no way prejudiced or impaired. The Purchaser shall advise manroland immediately of any seizure or other impairment of the owner's interests.

7. Delivery

- 7.1 In the event of trade terms being agreed on the conditions of delivery, they shall be interpreted in accordance with the Incoterms issued by the International Chamber of Commerce, Paris, in the most recent version made available by ICC on the date of signature of the Supply Contract.
- 7.2 Partial and/or early deliveries shall be allowed.
- 7.3 The Purchaser shall take over the supplied Goods irrespective of the existence of minor non-conformities, provided such non-conformities do not make it impossible to use the supplied Goods and manroland has confirmed that such defects will be remedied within a reasonable period.
- 7.4 Risk shall pass to the Purchaser pursuant to the respective Incoterm. However, if dispatch is delayed for reasons beyond manroland's control, risk shall pass to the Purchaser upon notification of readiness for dispatch.
- 7.5 Delivery shall be considered as having been completed when the risk passes to the Purchaser pursuant to the preceding Clause.

8. Periods, Dates and Delay

- 8.1 The delivery periods, as well as start, duration and termination of installation and commissioning are approximate and are subject to clarification of all details of the Contract in due time and fulfillment by the Purchaser of all its obligations in due time including, without limitation, provision of all official certificates, licenses and approvals, provision of payment securities or the effecting of down-payments. The delivery periods shall be deemed observed upon advice of readiness for dispatch in case the supplied Goods cannot be dispatched in due time through no fault of manroland.
- 8.2 The delivery period and the validity of the respective payment security shall be reasonably

extended in cases of an act or omission on the part of the Purchaser or by any other event beyond the reasonable control of manroland. This extension shall also apply if there is already default in delivery. The delivery period shall also be reasonably extended if the Purchaser is in arrears with its obligations other than payment obligations or if technical and commercial questions are not clarified within a reasonable period of time.

- 8.3. If a delay in delivery or other dates/periods as stipulated per the Supply Contract and the delay is proved to be due for reasons only attributable to manroland and the Purchaser has suffered a loss on account of such delay, it shall, to the exclusion of any other claims, be entitled to claim a compensation for the delay at a maximum rate of 1/2 (0,5) % of the net purchase price of the delayed portion for each full week of delay as liquidated damages. However, the aggregate liability in all cases of delay shall not exceed five (5) % of the net purchase price of that portion of the total supply which by reason of such delay cannot be used in time or put to the use intended. In case the price has not been fully paid by the Purchaser, the liquidated damages shall be offset against the final payment to manroland. The Purchaser shall forfeit its right to liquidated damages or any other indemnification for the delay, if it has not reserved its right upon receipt of the supplied Goods.
- 8.4. If manroland is in delay for reasons solely attributable to manroland, by the date on which the Purchaser has become entitled to the maximum amount of liquidated damages under the preceding Clause and, if the delayed obligation of manroland is still not fulfilled, the Purchaser may in writing demand fulfillment within a reasonable final period which shall not be less than thirty (30) days.
- 8.5. If manroland is in delay even after expiry and this is due to reasons solely attributable to manroland, then the Purchaser may by notice in writing to manroland, terminate the Contract in respect of such part of the supplied Goods which is affected by the delay.
- 8.6. The aforementioned claim for liquidated damages and the right of termination of the Contract are the sole and exclusive remedies available to the Purchaser in case of delay on the part of manroland with respect to any delay of contractually agreed dates. All other claims against manroland based on such delay shall be excluded to the extent permissible under the applicable law. The above limitations and exclusions of liability do not apply in case of acts or omissions by unlawful intent or gross negligence of directors or officers of manroland. In the event the delay has been caused by other persons employed or appointed by manroland such as a vicarious agent or a regular employee of manroland then the above limitations and exclusions of liability shall not apply in case of unlawful intent only.
- 8.7. If the Purchaser wishes to have the Goods dispatched after the end of the delivery period or in the event that dispatch is delayed for a reason attributable to the Purchaser, manroland shall be entitled to store the supplied Goods at the Purchaser's risk and costs. The respective costs and expenses incurred there from by manroland shall be charged to the Purchaser's account in the minimum amount of 1 (one) % of the net purchase price, beginning with the end of the delivery period and each consecutive period of four weeks (or part thereof). In such case the Purchaser shall pay the agreed purchase price which would have become due upon delivery against warehouse receipt or similar document. Any deterioration of the supplied Goods during storage does not entitle the Purchaser to refuse delivery and taking over of the supplied Goods, to request a reduction of the purchase price and/or any other compensation, indemnification or payment whatsoever.
- 8.8. The Purchaser shall be responsible for all additional costs resulting from a delay in the installation or commissioning of the supplied

Goods if such delay is for a reason attributable to the Purchaser.

9. Installation and Putting into Operation

- 9.1 If the supplied Goods are to be installed on the Purchaser's site by manroland pursuant to the Supply Contract, the Purchaser shall, at its own expense, provide that all preparatory work be done in advance in order to allow for a speedy installation and putting into operation of the supplied Goods by manroland. Preparatory work includes in particular the availability of operating and auxiliary staff, tooling, electrical power, water, materials, products necessary for operation of the equipment and the other measures required by Clause 9.
- 9.2 Before the agreed date for the commencement of the installation works, the Purchaser must have made all the arrangements for the site to be prepared for such installation works, which shall include, without limitation, the following: (i) foundation work, building work and scaffolding must be completed; (ii) necessary Equipment parts to be installed and put into operation have to lie ready; (iii) ground floor level access shall be provided; (iv) the site as well as access to it has to be cleared; (v) the floor loading capacity must be of sufficient strength to support the supplied Goods; (vi) foundations must be entirely dry and of sufficient cure.
- 9.3. Moreover the Purchaser shall provide:
- an adequate recreation room for manroland's personnel as well as secure areas for the storage of tools and equipment are available, and
 - that safety measures necessary for the protection of people and Goods on site have been taken and the supervisor for the installation has been informed about existing safety regulations.
- 9.4 If the Purchaser cannot perform some of the preparatory work or if the necessary tooling etc. is not available, such work may, at the sole discretion of manroland, be performed or provided by manroland. manroland may bill the Purchaser for the costs incurred.
- 9.5. In the case of installations to be performed outside of Germany, the Purchaser shall, at its own expense, procure all visas, work permits as well as any other kind of permit that may be required for all manroland's workers (employees, contractors or any person appointed by manroland) that will be travelling to participate in the installation works.

10. Claims for Defects

- 10.1 The Purchaser shall examine, test and inspect the supplied Goods promptly after such Goods become available to the Purchaser (or any person acting on its behalf) for examination, inspection and testing and shall notify manroland in writing of any non-conformity of the supplied Goods by specifying the nature of such non-conformity within ten (10) days from the date when the Purchaser discovers or ought to have discovered the non-conformity. Any non-conformity not detectable even on close examination must be notified as soon as it is discovered. In case the Purchaser fails to notify manroland within the periods mentioned herein, manroland shall be deemed to have delivered the supplied Goods in full conformity with the Contract.
- 10.2 The Purchaser shall take over the supplied Goods irrespective of the existence of minor non-conformities, provided such non-conformities do not make it impossible to use the supplied Goods and manroland has confirmed that such defects will be remedied within a reasonable period.
- 10.3. Provided the Purchaser has given notice of the lack of conformity in compliance with Clause 10.1, manroland will at manroland's option:
- repair the supplied good within a period of time reasonable under the circumstances and, if so chosen by manroland, at the Purchaser's premises, for which the Purchaser has to grant access to manroland's personnel; or

- b) replace on a CIP Purchaser's site (Incoterms) delivery basis the non-conforming supplied good with a conforming good within a period of time reasonable under the circumstances whereby manroland shall be entitled to remove and dispose them by any means manroland finds proper at its sole discretion
- 10.4 If the Purchaser has given notice of the non-conformity and no lack of conformity is found for which manroland is responsible, manroland shall be entitled to a compensation for the costs it has incurred as a result of such notice.
- 10.5. Unless otherwise agreed in writing, all any claims for defects of the Goods supplied shall be time-barred and no action can be taken by the Purchaser, whether before judicial or arbitral courts, after one (1) year.
- 10.6. This warranty period shall commence on the date (whichever occurs earlier):
- when the supplied Goods are ready for operation (Readiness for operation shall be considered as having been achieved, if the handing over report has been signed by the Purchaser. If the supplied Goods are not operated by the Purchaser but by a third party then the relevant date shall be the day the handing over report is signed by the third party operator. If the handing over report is not signed and returned to manroland within 14 days of the date it is given to the Purchaser or to the third party operator, if any, the expiry of this 14 day time limit shall be the commencement date.); or
 - when operation actually commences and irrespective of whether operation has been commenced by the Purchaser or a third party; or
 - the Goods being stored pursuant to Clause 8.7.
- 10.7 It is expressly agreed that after the expiry of the warranty period, the Purchaser shall not be entitled to claim, counterclaim or by any means rely on the non-conformity of the supplied Goods, even in defence to any action by manroland against the Purchaser. In respect of subsequent performance work and built-in replaced parts the limitation period ends – even in the event of repeated subsequent performance – six months after the ending of the limitation period of the supplied Goods at the latest.
- 10.8. For the execution of necessary subsequent adjustments the Purchaser shall
- grant the required time and opportunity, and
 - supply, at its own expense, auxiliary labour and equipment and perform any incidental work.
- The removal of defective parts as well as the fitting of supplied new parts shall be carried out by manroland or by manroland-authorized personnel at the cost and risk of manroland.
- 10.9. Extra costs for airfreight, express deliveries and the cost of any work carried out beyond regular working hours as well as extra costs due to the Goods supplied having been removed to a different place than the place of delivery shall in any case be borne by the Purchaser.
- 10.10. Liability for defective Goods shall not cover normal wear and parts which, owing to their inherent material properties or the use they are intended for, are subject to premature wear. Damage caused by improper storage, handling or treatment, overloading, the use of unsuitable fuels, oils etc., faulty construction work or foundations, unsuitable building grounds, chemical, electrochemical or electrical influences or any other circumstances which may arise through no fault of manroland shall also be excluded from the warranty.
- 10.11. The Purchaser may only make claims for defects if:
- the supplied Goods were installed and put into operation by manroland-authorized personnel; and
 - the defect has not arisen out of materials provided by or a design made or specified by the Purchaser; and
 - the Purchaser has observed the instructions issued by manroland, in respect of the operating and maintenance of the supplied Goods and, in particular, has duly carried out any specified checks; and,
 - no subsequent work has been carried out without the previous written and express approval of manroland; and,
 - no spare parts other than those manufactured by manroland have been used; and,
 - no unauthorised modifications of the supplied Goods have been made.
- 10.12 If within a reasonable period of time, manroland does not fulfil its duties under Clause 10.3, the Purchaser, by written notice, may fix a reasonable period for completion of manroland's obligations but such period shall always be:
- of no less than thirty (30) days; and
 - sufficiently long to allow manroland to perform at least three (3) attempts to remedy the defect(s), taking into the consideration the complexity of the Goods.
- 10.13 If manroland has failed to fulfil its remedy obligations as per the preceding Clause within such final time, the Purchaser may himself undertake or employ a third party to undertake the necessary remedial works at the expense of manroland.
- 10.14 Where successful remedial work has been undertaken by the Purchaser or a third party, manroland shall reimburse the reasonable and properly substantiated cost incurred by the Purchaser, but in any event, limited to the price such remedial work would cost at manroland's or manufacturer's workshop.
- 10.15 Only where the non-conformity has not been successfully remedied in accordance with the preceding Clauses and the non-conformity limits the supplied Goods as defined in the Supply Contract:
- the Purchaser is entitled to a reduction of the net purchase price in proportion to the reduced value of the supplied Goods, provided, that under no circumstances such reduction shall exceed (30 %) of the net purchase price of the supplied Goods. Subject to the above mentioned limitation for purchase price reduction, both parties will together nominate an independent expert who shall determine the amount of the reasonable reduction of the purchase price if there is a dispute about the amount for the reduction. If the parties are in dispute about the nomination of the expert the Chamber of Commerce in Offenbach am Main, Germany, shall nominate the expert. In the event manroland has rectified the defect during the warranty period after the reduction of the purchase price has taken place then the Purchaser is obliged to pay back the amount of the reduction to manroland upon first written receipt manroland.; or
 - where the non-conformity is so substantial as to significantly deprive the Purchaser of the benefit of the supplied Goods beyond the above limit of price reduction, the Purchaser may terminate the Contract by giving written notice to manroland. In such case, the Purchaser shall return the supplied Goods and manroland shall refund the price actually paid by the Purchaser, with a deduction equivalent to two percent (2%) of such price per month or fraction of a month during which the supplied Goods were able to perform at least fifty percent (50%) of its capacity, as agreed in the Supply Contract.
- 10.16. In the event of software defects, the preceding provisions apply but modified as follows: Only those defects are to be regarded as software defects which occur by virtue of the contractually envisaged conditions of application and which affect contractually agreed performance. The Purchaser is aware and agrees that it is impossible according to current technology, to exclude defects completely in data processing programs under all usage conditions. No claims for defects shall be made in respect of defects:
- which arise due to changes made to the software which were not authorised by manroland; or
 - which arise due to intervention into the software by persons who are not authorised by manroland.
- 10.17. The above liability for defects or non-conformity of the supplied Goods is made in lieu of all other liabilities or warranties, expressed or implied, including but not limited to any implied warranty of merchantability and/or fitness for a particular purpose and is made in lieu of all other obligations or liabilities on the part of manroland of any nature whatsoever.
- 11. Third Parties' Intellectual Property Rights**
- 11.1 If the use of the supplied Goods results in an infringement of third parties' intellectual property rights within the above defined warranty period, manroland will at its own expense arrange for the Purchaser to have continued use or modify the supplied Goods to such an extent that satisfies the Purchaser and so that the infringement of rights no longer exists.
- 11.2 Claims may only be brought by the Purchaser if:
- the Purchaser immediately notifies manroland of claims made against him of alleged infringements of intellectual property rights; and
 - the Purchaser allows manroland, if it requests so, to take over and control the defence, including for the purposes of appointing legal counsel and experts; manroland reserves to itself all defensive measures including in-court or out-of-court settlements; and
 - the Purchaser supports manroland in its defence against such claims to a reasonable extent and permits manroland to make any modifications in accordance with this Clause; and .
 - manroland reserves to itself all defensive measures including out of court settlement; and
 - the infringement is not the result of an instruction by the Purchaser; and
 - the infringement was not caused by any unauthorised change to the supplied Goods by the Purchaser or by virtue of use by the Purchaser which is not in accordance with the Contract.
- 12. Force Majeure**
- 12.1. manroland will not become liable to the Purchaser for any penalties, liquidated or unliquidated damages nor shall the Purchaser be entitled to exercise any remedy otherwise available to it, if one party's performance of any of its obligations is delayed or prevented by events such as, but not limited to the following: natural disasters, strikes, lock-out, sabotage, embargo, import restriction, port congestion, lack of usual means of public transportation, industrial dispute, war, civil war or warlike operations, threats of terrorism or strikes of terrorists, civil commotion, usurpation of civil or military government, restrictions in the use of power and delays in deliveries by sub-contractors / sub-suppliers caused by any such circumstances referred in this Clause or any other circumstances which are beyond the reasonable control of the party affected ("Force Majeure"). An event of Force Majeure, however, shall not excuse the failure of payment of moneys due by either Party to the other.
- 12.2. The Party claiming to be affected by an event of Force Majeure shall notify the other Party in writing without delay on the occurrence and on the cessation of such circumstance.
- 12.3. If Force Majeure prevents manroland from fulfilling its obligations in time, the delivery period shall be extended adequately and the Purchaser shall extend the validity of payment securities correspondingly. In addition, if Force

- Majeure prevents the Purchaser from fulfilling its obligations, it shall compensate manroland for expenses incurred in securing and protecting the supplied Goods.
- 12.4. If the performance of the Contract is substantially prevented, hindered or delayed for a single period of more than sixty (60) days or an aggregate period of more than ninety (90) days on account of one or more events of Force Majeure, the Parties will attempt to develop a mutually satisfactory solution. Failure to agree upon such solution within sixty (60) days of being requested by the other Party therefore, shall entitle either Party to terminate the Contract by giving written notice to the other.
- 12.5. Upon such termination, the Purchaser shall pay to manroland the Contract price properly attributable to the parts of the supplied Goods or work executed by manroland or being in progress at the date of termination and the costs reasonably incurred by manroland in the removal of manroland's equipment from the Purchaser's premises (if applicable).
- 13. Liability of manroland**
- 13.1. manroland is liable to the Purchaser for direct damages to real property and injury or death of any person provided those real property damages and injuries or death to persons are attributable to the negligence of manroland or its employees.
- a) manroland's liability for the above is limited for real property damages to a maximum of EUR 2.5 million per incident, in total, however, not exceeding EUR 5 million; and
- b) for injury/death of persons to EUR 2.5 million per incident.
- These provisions shall only be applied to personal injury and property damages which occur, if the supplied Goods have to be installed and/or erected under the responsibility of manroland.
- 13.2. Notwithstanding anything expressly provided to the contrary either in the Contract or by mandatory applicable law, in no event, whether as a result of breach of contract, warranty, tort (including negligence or patent infringement) or otherwise, shall manroland, or its sub-contractors or suppliers, be liable for other damages than those mentioned in the preceding Clause including but not limited to:
- a) loss of profit or revenues, loss of use of the product or any associated equipment, loss of hire, cost of capital, cost of substitute Goods, downtime costs or claims of the Purchaser's customers for such losses and damages; or
- b) any special consequential, incidental, indirect exemplary or punitive damages.
- The above limitations and exclusions of liability do not apply in case of acts or omissions by unlawful intent or gross negligence of directors or officers of manroland. In the event the delay has been caused by other persons employed or appointed by manroland such as a vicarious agent or a regular employee of manroland then the above limitations and exclusions of liability shall not apply in case of unlawful intent only.
- 13.3. If manroland furnishes the Purchaser with advice or other assistance which concerns any supplied Goods supplied hereunder or any system or equipment in which any such supplied Goods may be installed and which is not required by the terms of the Supply Contract or pursuant to any agreement resulting here from, the furnishing of such advice or assistance is given on a good will basis and shall not subject manroland to any liability, whether in contract, warranty, tort (including negligence or patent infringement) or otherwise
- 13.4. Guarantees are only those which are expressly specified as such in writing.
- 14. Miscellaneous**
- 14.1. The Purchaser shall not assign its contractual rights to a third party without the previous express and written consent of manroland.
- 14.2. For purposes of the Contract and unless otherwise agreed, the place of performance of manroland shall be or shall be deemed to be the place of manroland's registered office.
- 14.3. Unless otherwise stipulated, any claims of the Purchaser against manroland arising out of or in connection with the delivery of the supplied Goods shall be time-barred after eighteen (18) months of the date of delivery.
- 14.4. Any amendment of, addition to or change of the Contract must be in writing to be valid.
- 15. Governing Law and Jurisdiction**
- 15.1. The Contract shall be governed by and construed in accordance with the United Nations Convention on Contracts for the International Sale of Goods (hereinafter referred to as "CISG"), and to the extent that the respective issue is not covered by the CISG, by reference to the substantive laws of Switzerland.
- 16.2. Unless otherwise agreed in writing, all disputes arising out of or in connection with the Contract shall be finally settled under the rules of arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with the said rules. The place of arbitration shall be Zurich, Switzerland. The Language of arbitration shall be English. However, manroland, at its sole discretion, shall be entitled to initiate court proceedings through any otherwise competent ordinary court at manroland's or the Purchaser's place of business.
- 16. Severability**
- The invalidity of any provisions of the Contract does not affect the validity of the remaining provisions. Any invalid provision shall be replaced by a valid one which is likely to achieve the intended commercial purpose.