



<b>INSTRUCTIONS MANUAL</b>		
<b>Title: Technical Instructions on Sales Terms and Conditions</b>		
<b>Date: 05-09</b>	<b>Version: 1</b>	<b>1/12</b>

## **1. Purpose**

These instructions are intended to define the sales terms and conditions that apply to the products GOSAN S.A. sells.

## **2. Scope**

These conditions apply to all budgets estimates made by members of GOSAN S.A. for all contracts that are signed and all contracts that potentially may be the result of the foregoing contracts.

## **3. Development**

1. The supplier is the member of GOSAN S.A. who complies with these conditions and shall be referred to as the contractor. The other party shall be referred to as the principal.
2. In the event that there are discrepancies between the contents of the contract signed between the principal and the contractor, and these general conditions, the provisions of the contract shall prevail.
3. The conditions are for the exclusive use of the members of GOSAN S.A.

### **BUDGET ESTIMATES**

1. All budget estimates are non-binding.
2. Should the principal provide the contractor with information, designs etc the contractor shall assume that they are correct and shall use same as a basis for its budget estimates.
3. The prices quoted in the budget estimates are based, in accordance with the Incoterms 2000. The prices are exclusive of VAT.
4. Any failure to accept the budget estimate shall entitle the contractor to submit an invoice to the principal for all the expenses incurred in the drawing up of the budget estimate.

### **INTELLECTUAL PROPERTY RIGHTS**

1. Until agreed otherwise in writing, the contractor reserves all copyright and all industrial property rights of the budget estimates made, and all designs, illustrations, drawings, working models (test), software etc. provided.
2. The rights to the aforementioned information in Paragraph 1 shall remain the property of the contractor regardless of the fact that he/she has or has not submitted to the principal an invoice for its drawing up. Any copying, use or disclosure of this information to third parties without the prior express written authorisation of

<b>Prepared by:</b>	<b>Approved by:</b>
<b>Quality Controller</b>	<b>Managing Director:</b>



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the contractor is prohibited. For each breach of this provision, the principal must pay the contractor a penalty of €25,000. In addition to this penalty, a compensation payment may be claimed according to law.

3. The principal shall return upon first request, the information that was delivered as specified in Paragraph 1, within the period stipulated by the contractor. In the event of a breach of this provision, the principal must pay the contractor a penalty of €1,000 per day. In addition to this penalty, a compensation payment may be claimed according to law.

### **ADVISE, DESIGNS AND MATERIALS**

1. The principal cannot derive any rights from advice and information received from the contractor if the former does not have a direct relationship with the commission.

2. The principal is responsible for the drawings, calculations, designs and functional suitability of the materials prescribed for and by him/her and which have been made by him/her or on his/her behalf.

3. The principal indemnifies the contractor against any claims by third parties in relation to the use of drawings, calculations, designs, materials, samples, models and the like supplied by the principal or on his/her behalf.

4. The principal may, on his/her (allow) to inspect the materials that the contractor wishes to use prior to their processing. If as a result of same, the contractor sustains damages, these shall be borne by the principal.

### **DELIVERY DEADLINE**

1. The delivery deadline and/or completion period shall be set by the contractor and shall be of an approximate nature.

2. To set the delivery deadline and/or completion period, the contractor shall assume that he/she may carry out the commission under the circumstances that are known at the time.

3. The delivery deadline and/or completion period shall become effective when an agreement has been reached concerning the commercial and technical details, the contractor is in possession of all the necessary data and the final approved drawings etc, the payment (in instalments) have been agreed to and all the necessary terms and conditions have been met for the carrying out of the commission.

4.

a. In the event that any circumstances other than those known by the contractor when he/she sets the delivery deadline and/or completion period, the contractor may extend the delivery deadline and/or completion period both in terms of time which is necessary to carry out the commission under such circumstances. Should these activities not tie in with the contractor's schedule, it shall be carried out when the planning schedule permits same.



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b. In the event that further work is required, the delivery deadline and/or completion period may be extended by both the time as is necessary so that the materials and parts for such purposes may be supplied, and to carry out the additional work. Should the additional work not tie in with the contractor's schedule, it shall be carried out when the planning schedule permits same.

c. In the event that there is a suspension of the obligations by the contractor, the delivery deadline and/or completion period may be extended by the time that the suspension lasts. Should the continuation of the activities not tie in with the contractor's schedule, the activities shall be carried out in terms when the planning schedule permits same.

d. In the event that the weather prevents the work to be carried out, the delivery deadline and/or the completion period may be extended by the originating time delay.

5. Exceeding the agreed delivery deadline and/or completion period does not any under circumstances grant, the right to compensation unless it has been agreed to by the parties in writing.

#### **RISK PERIOD**

1. The delivery shall take place in the factory, "ex-works" according to the Incoterms 2000; the risk to the goods finishes at the moment that the contractor makes available the goods to the principal.

2. Notwithstanding the provisions in the preceding paragraph, the principal and the contractor may agree that the contractor is entrusted with handling the transport. In that case, the risk of storage, loading, transporting and unloading also lies with the principal. The principal may take out insurance against these risks.

3. In the event that there is a return and that the principal, pending delivery of the new product, continues to use the product to be returned, the responsibility to return the product lies with the principal up to the moment that it is made available to the contractor.

#### **PRICE CHANGES**

1. The contractor may invoice the principal a price increase due to specific cost factors after the signing of the contract, provided that the execution of the contract has not been completed at the time of the increase.

2. The principal is under the obligation to pay the price increase, as is specified in Paragraph 1, at the same time that the payment of the principal sum or the following instalment payment has been agreed to.

3. Should the principal supply the products and the contractor is inclined to use same, the contractor may charge a 20% maximum of the market price of the delivered products.



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### **IMPRACTICALITY OF THE COMMISSION**

1. The contractor is entitled to withhold the execution of his/her obligations, if due to unforeseen circumstances during the signing of the contract and which were beyond his/her control, and is temporally unable to meet his/her obligations.

2. The following are defined as unforeseen circumstances or those beyond the control of the contractor, distributors and/or subcontractors of the contract who do not meet (on time) with their obligations, the weather, earthquakes, fires, the loss or theft of tools, the materials with which work is to be done are ruined, road blocks, strikes or work stoppages and import or trade restrictions.

3. The contractor shall no longer be authorised to suspend works, if the temporal impediment to the execution of the contract has lasted for more than six months. The contract cannot be rescinded until its term has expired and only for that part of the obligations that has yet to be executed.

The parties are not entitled to any compensation for damages arising from or that may arise from the rescission of the contract.

### **CHANGES IN THE WORK**

1. Changes in the work involve in any case, an increase or reduction of the work if:

- a. there is a change in the design, the specifications or in the project;
- b. the information provided by the principal does not match the reality;
- c. the quantities differ from those estimated by more than 10%.

2. The additional work is estimated based on the value of the specific factors of the price prevailing at the time when the additional work is carried out.

The reduction of the work is estimated based on the value of the specific factors of the price prevailing at the time of signing the contract.

3. Should the balance of the reduction in work exceed that of the additional work, the contractor may charge on the final invoice 10% of the difference in the balance to the principal. This provision does not apply to the reduction in work as a result of a request by the contractor.

### **WORK EXECUTION**

1. The principal is liable for all damages, among others, as a result of the loss, theft, burning or deterioration of the property of the contractor, the principal and/or of third parties, such as tools and materials earmarked for the work, that are in the location where the works are carried out or elsewhere as agreed.



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2. Should the principal not meet his/her obligations, such as is specified in the preceding paragraphs, and this entails a delay in the execution of the works, the latter shall be carried out when the principal has met his/her obligations and when the schedule of the contract permits same. The principal is liable for all damages that the contractor sustains due to delays.

#### **DELIVERY OF THE WORK**

1. The work is considered as delivered when:

- a. the principal has approved the work;
- b. the principal has used the work. Should the principal use some of the work, this part shall be considered as delivered;
- c. the contractor has notified the principal in writing that the work is finished and the principal has not notified in writing that the work has been approved or not, within 14 days from the date in which he would have been notified;
- d. the principal does not approve the work based on minor defects or missing parts, which may be repaired or supplied within 30 days, provided that it is used in the work.

2. In the event that the principal does not approve the work, he/she is under the obligation to notify same to the contractor in writing, stating the reasons.

3. In the event that the principal does not approve the work, the contractor shall be offered the possibility to once again supply the work. In this case, the same conditions shall be applied to this provision.

4. The principal shall indemnify the contractor against any claims by third parties for damages to work parts that have yet to be delivered, caused by the use of parts already delivered.

#### **LIABILITY**

1. The contractor is liable for damages that the principal may sustain and which are the direct and exclusive result of a failure that is the liability of the contractor. Nonetheless, the compensation shall only cover those damages that are insured by the contractor, or those damages which should have been reasonably insured.

2. Should the contractor at the time of the implementation of the contract that did not have or have arranged to take out an insurance policy under reasonable terms, as specified in Paragraph 1, or could not subsequently extend same under said reasonable terms, the compensation for damages is limited to the amount that the contractor has paid for the contract in question (excluding VAT).

3. For the compensation purposes, the following shall not be considered as such:

- a. business losses, such as, damages for stoppages or loss of income. The principal, if so desired, may take out insurance against such damages;



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- b. related damages. Related damages is defined as, among others, those damages caused by or during the carrying out of the work to goods which are being worked on or are in the proximity of the location where they are worked on. The principal, if so desired, may take out insurance against such damages;
- c. wilful and negligent damages caused by support staff or by non-management subordinates of the contractor.

4. The contractor shall not accept any liability whatsoever for damages caused to the material delivered by the principal or on his/her behalf as a result of a shoddy work. At the request of the principal. the contractor shall once again carry out the work with new material that the principal supplies on his/her own account.

5. The principal releases the contractor from all liability for all third party claims in connection with product liability as a result of a defect in the product that the principal has supplied to third parties and which are composed (in part) of products and/materials supplied by the contractor.

#### **WARRANTY**

1. The principal is liable for a period of 2 years from the date of delivery of the proper functioning of the agreed service.

2. Should the agreed service consist of the acceptance of the work, the contractor shall warrant the good quality of the supplied construction and of the material used during the period mentioned in Paragraph 1, provided that the contractor had the freedom to choose the material himself/herself.

Should the delivered construction and/or materials used not be of a good quality, the contractor shall repair or replace same. The parts that the contractor repairs or replaces must be sent by prepaid mail. The assembly and disassembly of these parts and any travelling and accommodation costs shall be borne by the principal.

3. Should the stipulated service consist (in part) of the processing of material supplied by the principal, the principal shall warrant the good quality of the work carried out, during the period mentioned in Paragraph 1. Should the work not have been properly executed, the contractor may choose between:

- to carry out the work once again. In that case, the principal has to provide new material on his/her own account;
- to repair the defect. In that case, the principal has to ship the material to the contractor by prepaid mail;
- to accredit the principal a proportional share of the invoice.

4. Should the agreed service include the delivery of a good, then the contractor shall warrant the good quality of the delivered goods, during the period specified in Paragraph 1.

Should the delivery not be properly performed, the goods must be delivered by prepaid mail to the contractor. Then, the contractor may choose between:



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- to repair the goods;
- to replace the goods;
- to accredit the principal a proportional share of the invoice.

5. Should the agreed service consist (in part) of the installation and/or assembly of a delivered good, then the contractor shall warrant the good quality of the installation and/or assembly, during the period mentioned in the Paragraph 1.

Should the installation and/or assembly not be properly executed, the contractor shall repair same. Any likely travelling and accommodation costs shall be borne by the principal.

6. For those parts that the principal and the contractor have expressly agreed in writing there shall be a manufacturer's guarantee. Should the principal have the opportunity of knowing the contents of the manufacturer's guarantee, the latter shall enter into force rather than the warranty based on this paragraph.

7. In any case, the principal must offer the contractor the opportunity to repair a likely defect and/or once again carry out the work.

8. The principal may only appeal against the warranty after he/she has complied with all his/her obligations with respect to the contractor.

9.

a. There is no warranty for defects that are the result of:

- normal wear and tear;
- reckless use;
- scant or improper maintenance;
- installations, assembly, changes or repairs carried out by the principal or by third parties.

b. Delivered goods that were not new at the time of the delivery or those goods that have not been prescribed or supplied by the principal or on his/her behalf are not covered by the warranty.

c. The review and/or repair of the principal's goods are not covered by this warranty.

## **CLAIMS**

The principal can no longer appeal against any defect in the service, if within 14 days after the detection of the defect or when it would have reasonably been detected, has not notified the contractor in writing of the defect claim.



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## **UNCOLLECTED GOODS**

Should the goods not have been collected after the expiry of the delivery period, these shall remain at the disposal of the principal. The uncollected goods shall be stored at the principal's own risk.

## **PAYMENT**

1. Payment shall be made at the location of the headquarters of the contractor or in an account designated by the contractor.

2. Unless otherwise agreed, payment shall be made as follows:

a. for direct sales, in cash;

b. in instalments:

- 40% of the total price when it is commissioned;

- 50% of the total price upon delivery of the material, or if the delivery of the material is not covered by the commission, after the commencement of the works;

- 10% of the total sum of the delivery;

c. or otherwise, within 30 days from the date of the invoice.

3. Notwithstanding the agreed payment conditions, the principal is under the obligation, upon request and the discretion of the contractor, to provide enough security for payment. Should the principal not comply with same within the stipulated period, he/she shall be in breach of his/her obligations. The contractor shall in that case, be entitled to rescind the contract and claim damages from the principal.

4. The right of the principal to discount its claims to the contractor is excluded, unless, the contractor is declared bankrupt or there is a receivership with regards to the debts of the contractor.

5. The total immediate payment may be demanded when:

a. no payment instalment has been made within the specified date;

b. the principal is declared bankrupt or requests a suspension of payments;

c. a seizure of the property or credit of the principal has been made;

d. the principal (being a company) is dissolved or is liquidated;

e. the principal (being a natural person) requests a receivership with regards to the debts, is under custody or dies.

6.. Should the payment not take place within the agreed periods, the principal shall pay the contractor interest immediately. The interest is 12% per annum, but is equal to the legal interests should the latter be greater. For the calculation of interest, part of the month shall be considered as an entire month.

7. Should the payment not take place in the agreed periods, the principal shall pay the contractor all extrajudicial costs, with a minimum of €75.



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Costs are estimated based on the following table:

- on the first €3,000 15%
- on the supplement up to €6,000 10%
- on the supplement up to €15,000 8%
- on the supplement up to €60,000 5%
- on the supplement from €60,000 3%

Should the actual extrajudicial costs be greater than those itemised in the above calculation, the actual costs shall be paid.

8. Should a finding be given in the contractor's favour in a judicial proceeding, all costs associated with this procedure shall be borne by the principal.

#### **RESERVATION OF OWNERSHIP AND RIGHT OF PLEDGE**

1. After the delivery, the contractor shall continue being the owner of the goods should the principal:
  - a. breaches or were to breach his/her contractual obligations arising from this contract or other similar arrangements;
  - b. does not pay nor has no intention of paying the performed or to be performed works as specified in said contract;
  - c. fails to pay such claims originating from the breach of the aforementioned arrangements such as damages, penalties, interests and costs.
2. While a reservation of ownership is applied to those delivered goods, the principal may not register a lien over said goods beyond that of its normal business routine.
3. After the contractor has invoked his/her reservation of ownership, he/she may collect the delivered goods. The principal shall permit the entry of the contractor to the location where these goods are found.
4. Should the contractor not be able to appeal his/her reservation of ownership because the delivered goods are mixed, misshapen or modified, the principal is under the obligation to pledge the new processed goods to the contractor.

#### **RESCISSION**

Should the principal wish to rescind the contract without there being any breach by the contractor and the latter agrees to same, the contract shall be rescinded by mutual consent. In this case, the contractor shall be entitled to a compensation for all damages sustained, including sustained losses, loss of income and incurred expenses.



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## GENERAL CONDITIONS

1. All documents that are created in relation to this order shall contain the following information:
  - i. GOSAN, S.A.'s order no.
  - ii. Manufacturing Order, so that the product itself shall be clearly identified on its exterior with a label or a mark.
2. The supplier must verify all data, specifications, blueprints, terms and conditions, characteristics and information submitted by GOSAN, and shall immediately report any errors or omissions.

## DELIVERY /RECEPTION

1. Ex works deliveries must be made within the normal working days and hours, with the necessary time in advance at the end of the working day, so as allow during same its unloading and control, and with the prior warning of same when the nature or volume of the material to deliver is so required.

DELIVERY HOURS                      8 a.m. to 1 p.m.    and    3 p.m. to 5 p.m. (Monday to Friday)

2. The supply shall be considered as completed, upon the receipt of the materials or services, including the technical, commercial and quality requirements related to its purchasing.
3. All materials that require a certificate must be attached to the delivery of the material. The certificates shall be verified by the supplier stating that the values are classified as standard material, and as per the specific conditions required in the order. In the event that any value is incorrect, these values must be reported to the Quality or Technical Departments for its rejection or acceptance of the material.
4. Any goods that are delivered without its corresponding delivery docket may be rejected.
5. The purchaser is under the obligation to immediately replace the rejected material, provided always that GOSAN has not explicitly stated its desire to the contrary/unless expressly stated otherwise.

## TECHNICAL DATA

1. The difference between the requested and delivered material must not exceed that specified by GOSAN in the order or in blueprints.
2. In the event that the tolerances are not specified, those defined in the following Standards shall be applied:



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3.

- a. General tolerances for dimensions without tolerances: DIN 7168 Grade precision: Average
- b. Surface roughness: DIN EN ISO 1302
- c. General tolerances for welded structures: DIN 8570 Grade precision: B, F
- d. Forged products: Tolerances and deviations: DIN 7526

#### **PAYMENT METHOD/ EXPIRY DATE**

- 1. No direct debit 90 day bank draft. Unless under previously agreed special terms and conditions.
- 2. Expiry date on the 25th day of each month. Except for August when the bank drafts must be carried over to 25 September.
- 3. The corresponding invoices must be received by GOSAN, S.A. within a maximum of 10 days with regards to its issue date. All invoices that breach this condition shall be returned and/or their expiry date delayed.

#### **PENALTIES**

- 1. Should the supplier breach the delivery deadline, GOSAN, S.A. shall apply a penalty equivalent to 1% of the purchase order for each day of delay.
- 2. So that a force majeure event may be considered as a defense which releases the payment of the penalty, this fact must be notified in writing to GOSAN, S.A., 2 days after the purchase order is made and should it be accepted, also in writing to GOSAN, S.A..
- 3. The amount of the penalty to be imposed on the supplier shall be deducted from the amount of the invoices submitted for their payment.