



# GENERAL CONDITIONS

## OF SALE FOR EQUIPMENT 01/2021 (GCSE)

### 1. GENERAL

- 1.1 Any PURCHASE ORDER accepted by SICON is subject to the present GCSE.
- 1.2 Unless otherwise agreed by SICON in writing, should any provisions of the present GCSE in conflict with any of PURCHASER's General Conditions of Purchase, then the provision of the present GCSE shall prevail and shall automatically modify and amend PURCHASER's General Conditions of Purchase.
- 1.3 Any PURCHASE ORDER entered into by SICON shall only become valid upon SICON express written acceptance within 1 week.
- 1.4 Any modifications to the present GCSE shall only be applicable if SICON has agreed to it in writing.

### 2. DEFINITIONS

For the purpose of the present GCSE, the following terms shall have the meaning as defined here below:

- 2.1 "GCSE" shall mean the present General Conditions of Sale for Equipment 01/2021;
- 2.2 "ORDER ACKNOWLEDGEMENT" shall mean the letter or document in which SICON acknowledges its acceptance of the PURCHASE ORDER.
- 2.3 "PURCHASER" shall mean any person, company or entity, and shall include any permitted successor or assignee thereof, that places a PURCHASE ORDER with SICON.
- 2.4 "PURCHASE ORDER" shall mean a purchase order, agreement or contract placed by PURCHASER with SICON as accepted and/or amended by SICON in its ORDER ACKNOWLEDGEMENT, and shall include all annexure, amendments, general and particular conditions and other documents specially incorporated therein.
- 2.5 "TENDER" shall mean SICON's tender document in which SICON offers the scope of supplies and/or services to the PURCHASER including the present GCSE and any other document which may be included in the tender.
- 2.6 "SICON" shall mean SICON GMBH, a company incorporated in Germany and having its principal offices at Vordere Insbach 24-26, D-57271 Hilchenbach.

### 3. TENDERS

- 3.1 TENDERS cover only such supplies and/or services as are expressly stated therein.
- 3.2 The terms and conditions set forth in the PURCHASER's request for proposal ("RFP") shall not be binding on SICON, and any weights, quantities and dimensions indicated on drawings and/or documents provided with the RFP or during negotiations are to be considered reference values and shall not give rise to any contractual obligations of whatsoever nature.
- 3.3 TENDERS, as well as all included or referenced drawings and documents shall remain the intellectual property of SICON and shall be strictly confidential, and may not be used by PURCHASER for any purpose other than evaluation of SICON's TENDER, nor may they be divulged by PURCHASER, directly or indirectly, to any third party without the prior written consent of SICON.
- 3.4 Unless otherwise stated in the TENDER, the TENDERS are open for acceptance for a period of no longer than thirty (30) calendar days from the date of the issuance of such TENDER. Terms of PURCHASER's order that are at variance with any part of the TENDER shall be considered by SICON as a counter-offer, subject to acceptance or rejection by SICON as it may elect.
- 3.5 TENDERS are not binding unless otherwise stated. TENDER may be withdrawn by SICON at any time after the expiration of the validity period.

### 4. EFFECTIVENESS OF THE PURCHASE ORDER AND SCOPE OF SUPPLY

- 4.1 Unless otherwise agreed, any PURCHASE ORDER to SICON shall only be effective upon the latest of the following dates:
  - Date of the ORDER ACKNOWLEDGEMENT by SICON
  - Date of receipt of the down payment in SICON's bank account
  - Date of receipt of the import license, if applicable
  - Date of receipt of the Letter of Credit or an equivalent payment security acceptable to SICON
  - Date of notification by SICON to the PURCHASER that, if applicable, the required insurance cover from the competent Export Credit Agency has been granted to SICON.

The Purchaser and SICON will inform each other in writing immediately after any of the aforementioned conditions have occurred.

In case any of the aforementioned applicable conditions have not occurred within ninety (90) days after the date of the PURCHASE ORDER, then the PURCHASER and SICON shall consult with each other in order to analyse the reasons of such delay and agree on mutually acceptable solutions.

- 4.2 In case no solution was agreed within another thirty (30) calendar days, the provisions of clause 18.1.1 become applicable.
- 4.3 SICON's scope of work under a PURCHASE ORDER shall be the scope of work as accepted in SICON's ORDER ACKNOWLEDGEMENT,
- 4.4 SICON reserves the right to make changes in design and construction of the scope of work to be supplied, provided such changes do not negatively impact performance, operating efficiency, reliability, or cost. Any such changes shall be fully documented in accordance with the requirements of the PURCHASE ORDER.

## **5. DRAWINGS AND DOCUMENTS**

- 5.1 PURCHASER shall be fully liable for the accuracy and completeness of any and all drawings, documents and indications transmitted by it to SICON for the establishment of the TENDER and for the execution of the PURCHASE ORDER.
- 5.2 SICON shall provide drawings, as well as technical documents in quantity, in size and in the agreed format in accordance with the provisions of the PURCHASE ORDER. However, SICON shall not undertake to supply any calculation sheets, workshop or manufacturing drawings.

## **6. STANDARDS**

- 6.1 The equipment and the documentation are supplied in accordance with SICON's standards as specified in the TENDER. Modifications to these standards may be requested as far as technically acceptable to SICON, however, SICON reserves the right to modify the price and conditions of its TENDER or the PURCHASE ORDER.

## **7. INTELLECTUAL PROPERTY**

- 7.1 The technology and know-how incorporated into all drawings and all other confidential technical documents and information disclosed by SICON and/or its sub-suppliers for the purpose of carrying out the provisions of the PURCHASE ORDER, either during TENDER stage or during the execution of the PURCHASE ORDER, shall remain the intellectual property of SICON or its sub-suppliers.
- 7.2 PURCHASER shall use such drawings, data and documents only for the purposes of evaluating SICON's TENDER and for erecting, operating and maintaining the equipment supplied by SICON under the PURCHASE ORDER. PURCHASER shall observe strict secrecy and shall not disclose any drawing and/or any other confidential technical document, data or information to any third party, nor shall PURCHASER use any such drawing, document, data or information disclosed to it during TENDER stage or during the execution of the PURCHASE ORDER to design, construct, install and/or operate, neither directly nor indirectly, any equipment or plant or part of any equipment or plant of the same or similar nature neither for its own works nor for those of any third party.
- 7.3 PURCHASER is only allowed to give access to any third party to SICON's drawings, data and/or documents, as well as equipment or any part thereof for reasons of maintenance, if such third party have signed prior to disclosure to them a confidentiality agreement with PURCHASER in order to protect SICON's interests. Such a confidentiality agreement shall be in a form acceptable to SICON and a copy of the signed confidentiality agreement shall be made available to SICON immediately after signature between PURCHASER and any third party.
- 7.4 PURCHASER shall be fully liable for any damages caused to SICON resulting out of the non-observance of the above clauses.

## **8. PATTERNS**

- 8.1 In case PURCHASER provides for the pattern of the castings, such pattern shall be issued free of charge to SICON or to the workshops of its sub-suppliers. Any pattern provided by SICON will remain SICON's property.

## **9. WORKSHOP TESTS**

- 9.1 Workshop tests shall be carried out at the workshops of SICON or those of its sub-suppliers, during normal working hours and prior to the shipping of the equipment. Tests that SICON judges necessary shall be carried out according to SICON testing instructions. PURCHASER delegates may attend the tests. All related charges to such attendance shall be to the PURCHASER's account.

## **10. DELIVERY**

- 10.1 Delivery of the equipment by SICON shall be defined in the PURCHASE ORDER in accordance with the INCOTERMS Edition 2020, or the latest revision thereof. Partial deliveries are at SICON's discretion. Despite the stipulations in INCOTERMS Edition 2020, or the latest revision thereof, SICON shall in no case be responsible and in charge of unloading the equipment. In absence of any agreed upon delivery and / or absence of specified Incoterm (2020), or the latest revision thereof, delivery shall take place EXW manufacturer as per Incoterms (2020).
- 10.2 The delivery period is reckoned from the effective date of the PURCHASE ORDER.
- 10.3 In the event of the delivery of the equipment being delayed by any reason not attributable to SICON, the equipment shall be put at the disposal of PURCHASER in SICON's workshops and/or in those of its sub-suppliers and/or any third parties storage place, independently of any different terms of delivery provided for in the PURCHASE ORDER. Upon notification of readiness for shipment by SICON to PURCHASER the shipment shall be deemed as effected and the

respective payments shall be due. Any cost and liabilities associated with the intermediate storage and handling of the equipment shall be borne by PURCHASER.

10.4 In the event that after having given notice and the delivery is delayed for any reason not attributable to SICON, SICON may treat such failure as material breach of the PURCHASE ORDER and reserves its right to either terminate the PURCHASE ORDER or to freely dispose of the equipment. In the latter case, the contractual delivery dates will be postponed accordingly.

10.5 SICON's obligation to effect delivery in time shall be waived in case:

- the PURCHASER does not respect the contractually agreed payment terms
- the drawings, documents and/or any other information or other supplies or services to be provided by PURCHASER for the execution of the PURCHASE ORDER are not supplied in time
- any part of SICON's work is delayed by a Force Majeure event.

## **11. SITE SERVICES**

11.1 If site services are applicable, they shall be rendered in accordance with the TENDER of SICON.

## **12. TRANSFER OF RISK**

12.1 The transfer of risk from SICON to PURCHASER shall take place at delivery as defined in the PURCHASE ORDER in accordance with the INCOTERMS Edition 2020, or the latest revision thereof. Should, due to reasons not attributable to SICON, delivery of the equipment not be effected by the due date, the risk in the said equipment shall pass to PURCHASER upon notification of the readiness for delivery by SICON and SICON may store the equipment at PURCHASER's risk and expense and following notification of their availability, invoice the equipment as having been delivered. In case PURCHASER does not pay upon SICON's invoice(s), issued under the present clause 12.1, within the time limits as per clause 16.1 of the present GCSE, SICON remains entitled at its own discretion, without any special notice, to resell the equipment and to claim applicable damages from PURCHASER.

## **13. WARRANTY**

13.1 SICON's exclusive contractual warranty with respect to quality is that its supplies and services shall be free from defects in conception, design, materials, and workmanship.

13.2 Unless otherwise explicitly agreed, SICON's defects liability period is limited to the shorter period of twelve (12) months after the date of delivery (or after the date of readiness for delivery of the equipment in case of a delay attributable to PURCHASER), or to 2000 hours of operation, whatever comes first.

13.3 Until the end of the defects liability period as stated under clause 13.2 above SICON shall, at its own discretion, repair or replace, free of charge, Ex Work in accordance with INCOTERMS Edition 2020, or the latest revision thereof all pieces proven defective. If SICON elects to replace such defective equipment, then all replaced equipment shall become the property of SICON.

13.4 Equipment or any part thereof repaired or replaced under the warranty is guaranteed only for the remainder of the original defects liability period.

13.5 PURCHASER has to notify SICON in writing immediately of any defect or alleged defect within the defects liability period. For all such notification received after the end of the defects liability period SICON shall not be obliged to replace or repair any pieces which fail in service.

13.6 PURCHASER shall be responsible for any erection activity lost as well as to assist SICON in verification of the default and allow SICON to effect the chosen remedy. The PURCHASER will grant SICON adequate time and reasonable opportunity to inspect and remedy

13.7 SICON's obligation under this clause 13 shall not apply for any defects which are caused by normal wear and tear, incorrect storage, handling or installation, misuse, lack of maintenance and/or any other operation not in accordance with SICON's specifications, manuals and/or instructions. No liability shall be assumed by SICON in respect of parts replaced, repaired and/or manufactured by PURCHASER or any third party or by any act or omission beyond SICON's reasonable control.

13.8 The remedies provided for under this clause 13 are the sole and exclusive indemnification of SICON to PURCHASER in terms of its liability or the warranty, SICON's liability under this clause 13.8 shall in no case extend ten percent (10%) of the PURCHASE ORDER price. SICON expressly excludes any consequential and/or indirect damages and/or damages like loss of profit, loss of production and/or losses of any nature whatsoever.

13.9 The PURCHASER is not allowed to suspend any payments for reasons invoking this clause 13.

## **14. LIMITATION OF LIABILITY**

14.1 The indemnification and/or compensation for any prejudice caused to the PURCHASER under clause 13 above shall be limited to the specific remedies as set forth in that clause,

14.2 SICON's aggregate liability under a PURCHASE ORDER for any reason whatsoever is limited to ten percent (10%) of the PURCHASE ORDER price.

14.3 Notwithstanding anything to the contrary in the present GCSE or the PURCHASER ORDER, SICON shall in no case be liable whether in contract, tort, or any theory of law, for any consequential and/or indirect and/or special damages and/or damages like loss of profit, loss of production and/or losses of any nature whatsoever.

14.4 The personal liability of SICON's employees is excluded.

14.5 Unless otherwise agreed all claims against SICON must be brought (I) within six (6) months after the cause of action arises or, in the case of claims for defective equipment under warranty, (II) within the defects liability period as per clause 13.2, and PURCHASER expressly waives any longer statute of limitations.

## **15. PRICES**

15.1 Unless otherwise stated in the TENDER all prices are based on the labour and material cost and the exchange rates valid at the TENDER date. Any increase due to a change in either the labour and/or material costs and/or the exchange rates occurring after the expiration of the validity date of the TENDER shall be for PURCHASER's account.

15.2 All prices are exclusive VAT (Value Added Tax) and are exclusive of any taxes and/or duties which may be levied outside of the Territory of Germany, such as but not limited to import and/or custom duties and/or any sales or income taxes.

## **16. PAYMENTS**

16.1 Invoices of SICON are fully payable net latest ten (10) calendar days after receipt of SICON's invoices by PURCHASER in the currency stated on the invoices, unless otherwise stated in the TENDER, and all payments shall be deemed effected only after they have been credited to one of the accounts SICON stated on the invoice, without deduction and without reservation.

16.2 Any and all charges, fees, commissions and any other expenses in relation of Letters of Credit or of any payment security by the PURCHASER shall be paid for by the PURCHASER.

16.3 Any amount(s) due and not paid by the PURCHASER shall bear late interest without prior notice. The interest shall be calculated on basis of EURIBOR 3 months borrowing rate determined by the Banking Federation of the European Union plus five percent (5%), calculated on the EURO amount, starting from the due date of the payment until the date the payment has been credited to one of the accounts of SICON stated on the invoice.

16.4 If, due to PURCHASER's failure to pay the invoiced amount on the due date, SICON incurs losses on the foreign exchange rates, such losses shall be borne by PURCHASER.

16.5 PURCHASER may not affect any setoff with other claims the PURCHASER and/or any company affiliated with PURCHASER may have against SICON and/or any company affiliated with SICON.

16.6 No claim of whatsoever nature may entitle the PURCHASER to postpone or suspend any payment otherwise due.

16.7 In the event the financial situation of the PURCHASER materially deteriorates during performance of the PURCHASE ORDER, SICON has the right to either claim immediate payment the balance of the PURCHASE ORDER price due or to claim supplementary guarantees in respect of the performances of the PURCHASE ORDER, SICON has the right to cancel all PURCHASE ORDERS with the PURCHASER, if such payments and/or guarantees are not received within eight (8) calendar days after the date of having given formal demand.

## **17. TRANSFER OF TITLE**

17.1 It is explicitly agreed between the parties that the ownership of the equipment supplied shall only pass to PURCHASER at the complete fulfilment of PURCHASER's payment obligations under the PURCHASE ORDER.

17.2 SICON's equipment, goods and/or plants may not be given in pledge and title may not be passed to third parties by PURCHASER until the transfer of ownership has taken place in accordance with the provision of clause 17.1 hereof. In case the equipment, goods and/or plants are being part of a whole sold by PURCHASER to a third party, PURCHASER shall reserve title of SICON with said third party and/or any other third party.

17.3 As of transfer of risk and prior to the passing of ownership, PURCHASER shall be responsible for the safe custody, protection and preservation of the equipment, goods and/or plants and shall take all proper steps in respect of the adequate insurance thereof.

## **18. TERMINATION, POSTPONEMENT**

### **18.1 Termination by SICON**

18.1.1 SICON shall consider, at its own discretion, the PURCHASE ORDER as being terminated without giving rise to any obligation to SICON towards PURCHASER if the effectiveness was delayed and no agreement was achieved as per clauses 4.1 and 4.2.

18.1.2 In case the PURCHASER fails to meet any of its major contractual obligations SICON has the right to terminate the PURCHASE ORDER and is entitled to recover any excess cost and damage from the PURCHASER.

18.1.3 If the PURCHASE ORDER is suspended for reasons attributable to PURCHASER or is suspended by PURCHASER for a period exceeding sixty (60) calendar days SICON has the right to terminate the PURCHASE ORDER and damage incurred by SICON from the PURCHASER.

### **18.2 Termination and/or postponement by PURCHASER**

18.2.1 The PURCHASER cannot cancel or postpone the PURCHASE ORDER or any part thereof except with SICON's written consent and upon terms that will indemnify SICON against any losses.

18.2.2 If SICON agrees to cancel or postpone the PURCHASE ORDER or any part thereof PURCHASER shall pay to SICON the greater of an amount equal to (I) hundred percent (100%) of the price of such cancelled equipment or (II) the costs and/or damages incurred by SICON.

## **19. FORCE MAJEURE**

- 19.1 SICON shall not in any way be held liable for any non fulfilment of its contractual obligations resulting in whole or in part from any war (whether declared or not), act of terrorism, epidemic, pandemic, strike, labour conflict, accident, fire, flood: Acts of God, delay in transportation, shortage of materials, equipment breakdowns, changes or enactments of laws or regulations, orders or acts of any governmental agency or body, or any cause beyond the reasonable control of SICON, or rendering performance by SICON impracticable due to the occurrence a contingency the non occurrence of which was a basic assumption on which the ORDER ACKNOWLEDGMENT was issued.
- 19.2 In any such event SICON shall be entitled to such additional time to perform as may be reasonably necessary and shall have the right to apportion its works, under purchase orders/contracts or not, among its customers in such manner as it may deem equitable.
- 19.3 The occurrence of any such event for Force Majeure by one party shall be conveyed in writing to the other party within ten (10) working days of the occurrence. In such event any additional costs which will occur to SICON due to the occurrence of Force Majeure will have to be paid by PURCHASER to SICON on the same basis as in case of a postponement of the PURCHASE ORDER in accordance with clause 18.2.2.
- 19.4 SICON will automatically be granted an extension of time by PURCHASER due to the occurrence of Force Majeure of the same period as the case(s) of Force Majeure will last plus a reasonable period of time which SICON will need to resume the work under the PURCHASE ORDER.
- 19.5 In case an event of Force Majeure will continue uninterrupted for a period of four (4) months, PURCHASER and SICON will mutually agree on the performance of the PURCHASE ORDER and shall mutually agree on a solution, failing which, either PURCHASER or SICON shall have the right to terminate the PURCHASE ORDER.
- 19.6 In case of termination of the PURCHASE ORDER, SICON shall be entitled to the payment of an adequate remuneration inclusive of the expenses incurred up to that time and on submission of a substantiated invoice.

## **20. ASSIGNMENT**

- 20.1 PURCHASER shall not have the right to grant any of its obligations, rights and/or title under the PURCHASE ORDER to a successor or assignee without the prior written consent of SICON.

## **21. SEVERANCE OF TERMS**

- 21.1 If any provision of a PURCHASE ORDER and/or the present GCSE shall be declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject, such invalidity, unenforceability or illegality shall not prejudice or affect the remaining provisions of the PURCHASE ORDER and/or the present GCSE, which shall continue in full force and effect notwithstanding such invalidity, unenforceability or illegality, SICON and PURCHASER agree to replace such inappropriate provision by a new provision of the nearest legally acceptable arrangement in substance to replace the ineffective provision.

## **22. GENDER**

- 22.1 Words importing persons or parties shall include firms and corporations and any organisation having legal capacity. Words importing the singular also include the plural and vice versa where context requires. Words importing one gender also include the other gender.

## **23. UN CONVENTION**

- 23.1 All of the terms of the United Nations Convention on Contracts for the International Sale of Goods (adapted in Vienna, Austria on 10 April 1980) are expressly excluded from any PURCHASE ORDER.

## **24. JURISDICTION**

- 24.1 For any dispute arising from and in execution of the PURCHASE ORDER the Courts of Germany shall have the exclusive jurisdiction as to any and all disputes arising in connection with said PURCHASE ORDER. SICON reserves however the exclusive right to bring any dispute involving CUSTOMER before the Courts of Customer's jurisdiction of incorporation or the jurisdiction of the facility in which the SICON scope of supply shall be installed, as SICON may elect. The Laws of Germany shall be the applicable law in all disputes arising under any PURCHASE ORDER.
- 24.2 Notwithstanding clause 24.1 SICON may, at its own discretion, decide to submit any dispute arising from and in execution of the PURCHASE ORDER to arbitration. In accordance with the Rules of Arbitration of the International Chamber of Commerce (ICC). The venue of arbitration will be Germany.
- 24.3 The arbitration award shall be binding upon both Parties and may be enforced in any court having jurisdiction over the Parties against which enforcement is sought.