

## 1. Agreement

1.1 These General Terms and Conditions of Supply (hereinafter referred to as "**Terms and Conditions**") govern all supply of goods and systems and other related parts (individually or collectively, "**Parts**") as well as related services ("**Services**") done by Schmid North America Inc. with its registered office in Toronto (Canada), 40 University Avenue, Suite 904, ("**SCHMID**") to a contracting partner (hereinafter referred to as "**CUSTOMER**").

These Terms and Conditions apply to every sales contract, contract of work and services between SCHMID and a CUSTOMER or order concluded by SCHMID (as the seller/contractor/supplier) unless otherwise agreed upon in writing.

SCHMID's ACCEPTANCE OF CUSTOMER'S ORDER FOR SUPPLY OF GOODS, SYSTEMS, PARTS AND SERVICES IS EXPRESSLY CONDITIONED BY CUSTOMER'S ASSENT TO THE TERMS AND CONDITIONS CONTAINED HEREIN.

1.2 By accepting and/or executing an order to SCHMID, CUSTOMER accepts and undertakes to comply with these Terms and Conditions.

1.3 Contractual agreements between SCHMID and the CUSTOMER that deviate from these Terms and Conditions must refer explicitly to these Terms and Conditions and must have the legally valid signature of both contracting parties.

1.4 Any general terms and conditions of business, sale etc. of SUPPLIER are not accepted by SCHMID and under no circumstances are deemed to form part of the contract. SCHMID and CUSTOMER agree that these Terms and Conditions shall prevail over any conflicting or different terms in the CUSTOMER's order documents and any failure of SCHMID to object to any conflicting or different provision of the CUSTOMER's order documents, shall not be construed as an acceptance of any such provision or a waiver of these Terms and Conditions. General Terms and Conditions of Business or General Terms and Conditions of Purchase or Procurement, etc. issued by the CUSTOMER shall only be binding if explicitly acknowledged in writing by SCHMID as a binding part of the contract.

## 2. General information

2.1 The contract between SCHMID and the CUSTOMER shall (only) be concluded and become legally binding once SCHMID has sent written confirmation that it accepts the order (order confirmation).

2.2 Quotations issued by SCHMID that do not specify a time limit for acceptance are non-binding.

## 3. Scope of supply and services

3.1 The scope of goods and services by SCHMID shall be exclusively defined by the order confirmation issued by SCHMID.

3.2 Deliveries, materials and/or services not explicitly contained in the order confirmation shall be separately invoiced by SCHMID. In particular, this concerns any expenditure for assembly, transport, commissioning of the system as well as the final inspection and acceptance.

## 4. Illustration, plans, features and technical specifications

4.1 SCHMID reserves the right to make technical changes at any time. Materials can be substituted with other materials of similar quality at the discretion of SCHMID.

4.2 The CUSTOMER shall inform SCHMID of all the functional technological requirements for the system to be installed. This applies in par-

ricular, but not exclusively, in cases where these requirements deviate from the general recommendations of SCHMID, or from the usual requirements or those that can generally be expected.

## 5. Intellectual property

Each party will maintain ownership of the intellectual property it possessed before the Order. Any new intellectual property developed by SCHMID during the execution of the order, whether independently or with input from the CUSTOMER or a third party, will be exclusively owned by SCHMID. The CUSTOMER agrees to provide necessary assignment documentation to ensure this outcome.

## 6. Copyright and ownership of technical drawings and documents; confidentiality obligation

Technical drawings and documents that are issued to the CUSTOMER remain in the ownership of SCHMID and are protected by copyright law. The use and/or passing on of such drawings and documents (whether unchanged or amended) is permitted only with the written agreement of SCHMID. The CUSTOMER shall maintain confidentiality with regard to all documents and information that it receives from SCHMID.

## 6. Prices

6.1 All prices are quoted in Canadian Dollars (CAD; for deliveries within Canada) or United States Dollars (USD; for deliveries to the USA) as net, excluding packaging, insurance, etc. and without any deductions, unless explicitly agreed otherwise in writing.

6.2 All additional costs, e.g. for freight, transport, insurance, transit licences, export and import permits and other permits and certifications, shall be borne by the CUSTOMER. SCHMID reserves the right to levy additional charges at any time.

6.3 Likewise, the CUSTOMER shall bear the costs of all types of taxes, duties, fees, customs duties and the like which are charged in connection with supply and delivery, or shall reimburse SCHMID for such costs on production of relevant proof thereof, if SCHMID has been made liable to pay them or was obliged to pay such costs in advance. SCHMID reserves the right to levy additional charges at any time.

6.4 SCHMID reserves the right to make a price adjustment if there are changes in the wage rates, the cost of the materials or the basis of calculation between the time of the quotation being issued and the fulfilment of the contract.

Moreover, a price adjustment may be made if

- the delivery date is subsequently postponed by the CUSTOMER (whereby any storage costs shall be borne by the CUSTOMER), or if
- changes are made to the type or scope of the agreed goods or services, or if
- changes are made to the materials or execution/design as a result of the documents issued by the CUSTOMER not representing the actual conditions or circumstances or being incomplete.

6.5 All prices are subject to statutory value-added tax. In the event of a change in the rate of VAT, any value-added tax owed and payable by the CUSTOMER shall be automatically adjusted to reflect the change.

## 7. Payment terms

7.1 The payments shall be made by the CUSTOMER in accordance with the agreed payment terms at the domicile of SCHMID and with no deductions, unless agreed otherwise in writing referring explicitly to

these Terms and Conditions. The duty of payment shall be deemed to have been fulfilled when the amount owed has been deposited in the agreed currency at the domicile of SCHMID, for SCHMID's free disposal.

7.2 Unless a different agreement has been made in these Terms and Conditions and/or on an individual case basis referring explicitly to these Terms and Conditions, the price shall be paid in the following instalments:

- 40% on receipt of order, payable immediately upon receipt of invoice,
- a further 40% once the main components are ready for dispatch, payable upon notification by SCHMID and immediately upon receipt of invoice and before the goods are dispatched,
- a further 10% on completion of the rough assembly of the main components, payable immediately upon receipt of invoice and before commissioning of the system by SCHMID,
- and the remaining 10% immediately upon notification by SCHMID that the installation of the system is complete, but at the latest six weeks after completion of the assembly work. This (remainder) sum shall be guaranteed by the CUSTOMER for SCHMID by means of a bank or insurance guarantee, unless this is not required by SCHMID in an individual case.

If the CUSTOMER should fail to perform necessary cooperative action and/or if there is a delay on the part of the CUSTOMER, all outstanding instalments at the time shall automatically fall due for immediate payment.

If delivery of a system is not possible for reasons outside the control of SCHMID, the latter shall be entitled to issue and demand payment of an invoice for 90% of the materials portion.

Unless otherwise agreed in an individual case, spare parts shall be paid within 14 days of delivery, strictly net and without any deductions.

7.3 The payment deadlines shall be observed under all circumstances, even if production, transport, dispatch, assembly, commissioning or acceptance of the goods or services is delayed or rendered impossible for reasons outside the control of SCHMID, or if non-essential components are missing, or if follow-up work is deemed to be necessary, insofar as the use of the goods supplied is not rendered impossible. The CUSTOMER shall not have any right to withhold payment by reason of any alleged defect. It may offset only such claims that have been acknowledged in writing by SCHMID or that have been declared legally valid in a court of law.

7.4 If the CUSTOMER is in default on an agreed payment or other obligation, SCHMID is entitled to

either insist on the fulfilment of the contract and

- a) postpone the fulfilment of SCHMID's own obligations until the arrears have been paid or until the other obligations have been performed, and
- b) to extend the delivery period accordingly, and/or
- c) to demand security for all of the outstanding charges

or else to rescind the contract after having granted a reasonable grace period, and to demand compensation.

7.5 If the CUSTOMER fails to meet one of the agreed payment deadlines, it shall be liable, without reminder, for interest with effect from the agreed date on which the payment was due, at an interest rate of 1.5% per month or 18% per annum.

7.6 If SCHMID is forced to store the system or parts thereof as a result of a delay in accepting delivery on the part of the CUSTOMER, the CUSTOMER shall reimburse the storage costs in line with the market rate. The CUSTOMER's obligation to pay for storage costs shall last from the beginning of the second week after the agreed delivery date until the end of the storage period.

## 8. Delivery period

8.1 The delivery period shall commence upon dispatch of the order confirmation, provided that all official formalities such as import or export permits, transit licences and payment authorisations have been obtained and all required payments and collateral have been provided by the CUSTOMER. Moreover, the delivery period shall commence only when all technical and commercial details and data have been definitively clarified. The delivery period shall be deemed to have been complied with if the goods to be delivered have left SCHMID's works by the delivery deadline, or if the CUSTOMER has been informed that the goods are ready to be dispatched.

8.2 If a delivery date is agreed, this shall be on the understanding that the date is as accurate as possible as far as can be planned, but that the date is not guaranteed. Delivery dates shall only be binding if they are explicitly denoted as fixed dates in the order confirmation.

8.3 The compliance with the delivery period and delivery date requires the fulfilment of contractual obligations on the part of the CUSTOMER.

8.4 The delivery period shall be extended for the appropriate time period, i.e. any delivery date shall be postponed for the duration of the delay:

- if the information required by SCHMID for the fulfilment of the contract - in particular the technical information - has not been provided in full and/or in time to SCHMID, or if the information is subsequently amended by the CUSTOMER, thereby causing a delay in the goods or services,
- or if hindrances occur which SCHMID is unable to avoid in spite of exercising all due care, irrespective of whether the hindrances lie with SCHMID, with the CUSTOMER or with a third party. These hindrances include, but are not exclusively restricted to, accidents, substantial disruption to operations, industrial disputes, delayed or incorrect delivery of requisite raw materials, semi-finished products or finished products, the loss of important components, official actions or omissions, acts of God, etc.,
- or when the CUSTOMER or a third party is behind schedule with work that must be carried out by them, or is in default of their contractual obligations.

8.5 SCHMID shall not be liable for delay or default in delivery resulting from any cause beyond its control, including but not limited to governmental action, strikes or other labour issues, fire, damage or destruction of products or facilities, wars, pandemics, acts of terrorism, manufacturers and/or suppliers shortages, availability or timeliness of transportation, materials or supplies, and acts of God (each a "Force Majeure event"). Upon the occurrence of a Force Majeure event, the time for SCHMID's performance shall be reasonably extended, the purchase price to SCHMID shall be adjusted for any increased costs SCHMID incurs from the Force Majeure event and CUSTOMER shall not be entitled to any other remedy.

8.6 If the CUSTOMER can demonstrate that it has suffered loss as a result of a delay attributable to gross negligence on the part of

SCHMID, and has first set an appropriate grace period by registered letter which has not been complied with, the CUSTOMER shall be entitled to claim compensation for the delay. This shall amount to one half of one percent for each full 14 days of delay but shall not exceed 5% of the contract price of the delayed portion of the delivery. The first two weeks of delay shall provide no grounds for claiming compensation for delayed delivery.

8.6 Once the maximum amount for delay compensation has been reached, the CUSTOMER shall stipulate in writing an appropriate grace period for the fulfilment of the contract by SCHMID. If this grace period is not complied with for reasons that are entirely the fault of SCHMID, the CUSTOMER shall be entitled to refuse acceptance of the delayed part of the delivery. If it is commercially unreasonable to expect the CUSTOMER to accept a partial delivery, the CUSTOMER shall be entitled to withdraw from the contract and to claim a refund of any payments that have already been made in return for any goods delivered.

8.7 The CUSTOMER shall derive no rights or claims from the default of SCHMID other than those expressly set forth in this clause 8. These restrictions shall not apply to unlawful intent on the part of SCHMID.

8.8 If the dispatch is delayed at the request or fault of the CUSTOMER, the CUSTOMER shall be liable for the costs incurred for storage at the SCHMID works after the date on which it was informed that the goods were ready for dispatch. The amount charged shall be a minimum of one half of a percent of the invoice amount for every month of storage. After a reasonable deadline has passed without results, SCHMID shall be entitled to sell the goods to a third party. The CUSTOMER shall be entitled to any proceeds from the third-party sale. In return, he shall remain obliged to pay the full purchase price.

## 9. Packaging

The CUSTOMER shall properly dispose of the packaging at its own expense, unless SCHMID requests the return of the packaging in individual cases at the time the contract is concluded.

## 10. Transfer of use and risk

Use and risk of loss or damage shall be transferred to the customer at the latest when deliveries are dispatched from the works of SCHMID respectively when they are handed over to the common carrier. If the delivery is delayed as a result of circumstances attributable to the CUSTOMER, the risk is transferred to the CUSTOMER on the day which was originally envisaged for the dispatch from the works of SCHMID respectively the handing over to the common carrier. From this date onwards, the goods shall be stored and insured at the CUSTOMER's own expense and risk.

## 11. Dispatch, transport and insurance

11.1 The goods shall be transported at the expense and risk of the CUSTOMER. Any complaints in connection with the dispatch or transport shall be addressed to the final haulier by the CUSTOMER immediately upon receipt of the delivery or the consignment documents.

11.2 It shall be the responsibility of the CUSTOMER to insure the goods against loss or damage of any kind.

## 12. Further obligations of the CUSTOMER

12.1 The CUSTOMER shall, no later than when placing the order, make SCHMID aware of all regulations and industrial standards that will apply to the goods, the assembly and any other services to be delivered at or en route to the place of installation.

12.2 The CUSTOMER shall be responsible for ensuring that all preparatory work to be performed by the CUSTOMER and any other enabling works are carried out properly and professionally at its own expense (and, where applicable, in accordance with the documentation supplied by SCHMID). In particular, the CUSTOMER shall undertake all necessary construction works on the buildings, whereby the suitability of the boiler room floor for the installation of the SCHMID system (in respect of the floor's load bearing capacity and heat resistance) shall be verified in advance by an approved structural engineer at the expense of the CUSTOMER. Furthermore, the CUSTOMER shall fix all cylindrical anchorages and inserts for push feeder floors and shall put in place all penetration (firestop) seals for penetrants (e.g. screws, pipes, fire protection valves, cables, conduits, ventilation pipes, etc.). It shall be the responsibility of the CUSTOMER to ensure that there is a constant supply of fresh air to the boiler room. The CUSTOMER shall furthermore be responsible for undertaking the hydraulic connection of the boiler to the heating system (including all safety installations), the connection of the economiser to the boiler, the pipework and connection for the grate cooling apparatus and the cooling system for the pusher (all including pumps and valves), the insulation of the flue pipes from the boiler to the chimney, the fireproof coating and/or cladding of all installation components, the insulation of fittings, the insulation of the exhaust gas recirculation (recirculation line), the connection of the fire protection system to the water network (to be mounted in front of the extinguishing water outlet) and an additional water outlet for fire lobby protection.

12.3 The CUSTOMER shall also be responsible for the assembly and fixing of the control cabinet, for the emergency power supply, the supply line to the control cabinet and the connection of the cable, the laying and connection of all electrical cables from the control cabinet to the various motors and appliances (including cable glands) as well as carrying out equipotential bonding of all the system components. The CUSTOMER shall ensure that an electrician engaged by it is present during the commissioning of the installation. Commissioning shall be understood to mean the assessment of the basic proper functioning of the system by SCHMID.

12.4 During assembly, the CUSTOMER shall provide the site power supply (including power supply connection at the assembly site) and the lighting at its own expense.

12.5 The CUSTOMER shall undertake the requisite accident prevention measures and protective measures (including all occupational health and safety measures) at its own expense. The CUSTOMER shall ensure that the electrical panel board is protected and that all necessary scaffolding, platforms, etc. are provided in accordance with the relevant statutory provisions and regulations. The CUSTOMER shall ensure that all fixed platforms and barriers are in place at the system, and that the installation site is locked up adequately and in accordance with the applicable regulations. In particular, the CUSTOMER shall expressly notify SCHMID if special consideration needs to be paid to the CUSTOMER and/or to other suppliers or contractors or if particular regulations must be adhered to. SCHMID shall be entitled to decline or cease work if it deems that the safety of personnel is not guaranteed.

12.6 The CUSTOMER shall guarantee that the installation and the water quality comply with the guidelines of SCHMID (in accordance with the operating instructions) (also in the case of refills), and that, in the event of breakdown of the boiler pump or a power outage, the continued heat transfer is guaranteed at all times. The CUSTOMER shall be responsible for the treatment of the feed water.

12.7 The CUSTOMER is obliged to provide operational cranes and lifting gear that are suitable for unloading and assembly and which comply with safety regulations, together with operating personnel, appropriate scaffolding and means of conveyance.

12.8 The CUSTOMER shall ensure that the transport routes to the installation site are in a usable condition and that the assembly site is ready for the work to be undertaken, that there is guaranteed unhindered access to the assembly site, and that the required access to and from the site is sufficiently guaranteed at all times. Unless otherwise agreed, access for lorries shall be ensured.

12.9 The CUSTOMER shall ensure that the appropriate permits and licences are granted to SCHMID in good time for the import and, if relevant, export of tools, equipment and materials, and shall pay any duties, tariffs, fees, etc. associated therewith.

12.10 Any additional costs incurred by SCHMID as a result of hindrances at the installation site or on the part of the CUSTOMER (personnel hours, travel costs including time spent, expenses, etc.) shall be paid by the CUSTOMER at the agreed rates, or, if no such agreement has been made, then at the rates normally applied by SCHMID.

**13. Inspection and acceptance of goods and services**

13.1 SCHMID shall inspect the goods and services to the usual extent prior to dispatch. If the CUSTOMER requires any additional inspections, these shall be subject to an additional written agreement and shall be at the expense of the CUSTOMER.

13.2 The CUSTOMER shall inspect the goods and services within eight days of delivery and shall inform SCHMID immediately and in writing of any deficiencies or defects. Should the CUSTOMER fail to do so, the goods and services shall be deemed to have been approved and warranty and liability claims forfeited.

13.3 SCHMID shall rectify any defects or deficiencies notified to it in accordance with clause 13.2 above, and the CUSTOMER shall give SCHMID every opportunity to do so. Once the defects or deficiencies have been rectified, a final inspection and acceptance of the remedial works shall take place at the request of the CUSTOMER or SCHMID.

13.4 The final inspection and acceptance process shall be initiated once SCHMID has given verbal or written notification that the installation of the system is complete. The process of final inspection and acceptance and the definition of the corresponding terms and conditions shall be set forth in a separate written agreement. Should official approvals be required, these shall be at the expense of the CUSTOMER. Emission measurements and acceptances by the relevant authorities or an officially approved or designated firm or an officially recognized or designated institute shall also be at the expense of the CUSTOMER.

13.5 When the system is commissioned by SCHMID, the agreed fuel (whereby the term "scrap wood" refers to fuels which are permitted by law in the relevant country) and the requisite electricity supply shall be provided by the CUSTOMER at the CUSTOMER's expense.

13.6 In the absence of any other written agreements, the following shall apply:

- SCHMID shall give the CUSTOMER sufficient notice of the final inspection and acceptance in order for the latter to be able to take part therein.

- A written report of the final inspection and acceptance shall be drafted, which shall be signed by the CUSTOMER and by SCHMID. The report shall record that the final inspection has been carried out and accepted or that it has been accepted subject to certain conditions, or that the CUSTOMER has refused acceptance. In the latter two instances, the relevant defects or deficiencies shall be individually and clearly detailed in the report.

The CUSTOMER shall not refuse acceptance, nor refuse to sign the final inspection and acceptance report, on the grounds of minor defects or deficiencies, especially those which have no significant adverse impact on the functionality of the goods or services. Any such defects or deficiencies shall be rectified as quickly as possible by SCHMID.

In the event of significant deviations from the contract or of serious defects or deficiencies, the CUSTOMER shall give SCHMID the opportunity to rectify these within a reasonable grace period. Should significant deviations from the contract or serious defects or deficiencies again be evident after the remedial works have been completed, the CUSTOMER shall only be entitled to request a reduction in price or other services from SCHMID if this has been explicitly agreed. If it is commercially unreasonable to expect the CUSTOMER to accept partial delivery, it shall be entitled to withdraw from the contract. SCHMID can only be required to refund amounts that have been paid to it for parts that relate to the cancellation. Such claims against SCHMID are restricted in any event to the net order amount (net price).

13.7 Apart from the above, the final inspection and acceptance shall be deemed complete in the following circumstances:

- if the CUSTOMER refuses acceptance without legitimate reason, or unduly delays the process, or
- if the CUSTOMER refuses to sign a final inspection and acceptance report which has been drafted in accordance with clause 13 above, or
- as soon as the CUSTOMER uses the goods or services supplied by SCHMID.

13.8 If the commissioning of the system by SCHMID cannot take place, or cannot be progressed through all load stages, or cannot be fully completed, owing to circumstances for which the CUSTOMER is responsible (such as heat transfer failure), any additional costs incurred by SCHMID as a result (personnel hours, travel costs including time spent, expenses, etc.) shall be reimbursed by the CUSTOMER at the agreed rates, or, if no such agreement has been made, then at the rates normally applied by SCHMID.

13.9 All official approvals (certifications, etc.) as well as for the submission of data/documents to the authorities shall be at the expense of the CUSTOMER and shall be paid by it.

**14. Warranty; liability for defects and deficiencies**

14.1 The parties expressly agree that the CUSTOMER's sole and exclusive remedy against SCHMID shall be for the repair and/or replacement of defective goods as provided herein. The CUSTOMER shall not be entitled to any other claims, especially claims for a reduction in price or change in product, for replacement costs incurred by the reseller, damage compensation, costs incurred in determining the cause of damage, expert opinions, or consequential damage (interruption of operations, water damage, environmental damage, etc.).

The CUSTOMER, at its own expense, shall arrange and perform all preparatory and subsequent work and tasks that are required in connection with remedial work by SCHMID (such as emptying and filling

silos, providing clear access to the system, etc.). Any work undertaken by the CUSTOMER itself during the warranty period shall be at the expense of the CUSTOMER and shall not constitute any basis for claims against SCHMID.

**14.2 THE WARRANTIES SET FORTH BELOW ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THOSE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. NO AFFIRMATION OF SCHMID, BY WORDS OR ACTION, OTHER THAN AS SET FORTH IN THIS SECTION, NOR ANY ADDITIONAL WARRANTIES, EXPRESS OR IMPLIED, MADE BY SCHMID TO CUSTOMER PURCHASERS OF THE GOODS SHALL CONSTITUTE A WARRANTY HEREUNDER.**

14.3 The warranty period for heat exchanger bodies with automatically fed combustion chambers as well as for heat exchanger bodies with manually fed combustion chambers shall be two years. The warranty period shall begin on the day after SCHMID has given notification that the installation of the system is complete, but at the latest six months after the day of delivery.

14.4 The warranty period for conveyor and material handling systems for electrical components, controls, fixtures and fittings shall be one year after the day of delivery.

14.5 The warranty period for all other delivered parts and services shall be two years after the day on which SCHMID has given notification that the installation of the system is complete, but at the latest 6 months after the day of delivery.

14.6 For replacement parts or parts which have been repaired, the warranty period shall recommence and shall be one year from the date of replacement or repair.

14.7 When goods are delivered for resale, SCHMID's warranty obligations shall consist solely and exclusively in repairing defective goods or parts on the system free of charge or providing replacement parts free of charge, whereby SCHMID may choose the measure at its own discretion.

14.8 The warranty shall expire prematurely if the CUSTOMER or a third party undertakes modifications or repairs or, if any defect comes to light, the CUSTOMER fails to take all appropriate measures immediately to mitigate the damage and give SCHMID the opportunity to rectify the defect or deficiency. Furthermore, the warranty shall be null and void if the system supplied by SCHMID is fired with fuel that does not comply with the fuel definition contained in the order confirmation and/or results in flue gases that are corrosive, abrasive or otherwise aggressive.

**14.9 WARRANTED QUALITIES SHALL BE ONLY THOSE WHICH HAVE BEEN EXPRESSLY DEFINED AS SUCH IN THE ORDER CONFIRMATION.** Warranty of qualities shall apply until the expiry of the warranty period at the latest. If a final inspection and acceptance has been agreed, the warranty shall be deemed to have been fulfilled if evidence of the warranted quality has been provided on the basis of said inspection. If and to the extent, that a binding agreement for emission values (dust, NOx, CO, etc.) exists, these measurements and the compliance thereof, can only be guaranteed providing that such measurements are carried out in strict accordance to the legal requirements applicable at the respective installation site. These assessments of the

emission values are valid for both parties. Alternative emission standards or existing emission limit values, for different measurement rules of authority, such as continuous measurements, can't be guaranteed.

14.10 Schmid AG does not accept any liability for system downtimes caused by the failure of continuous emission measurements or flue gas treatment systems or the resulting costs.

14.11 The warranty obligation and liability of SCHMID shall exclude damages that cannot be demonstrated to have been caused by poor quality materials, flawed design or defective workmanship, but that are the result of, for example, natural wear and tear (there shall be total exclusion of liability for defects in wearing parts), improper maintenance, failure to comply with operating instructions (e.g. the use of foreign substances or over-sized pieces of wood which come to be in the silo, or the use of fuels which contain foreign materials such as steel parts, nails, aluminium, heavy metals, copper or other such materials), excessive loading, unsuitable operating medium, water quality that does not meet the requirements of SCHMID, non-compliance with the technical guidelines issued by SCHMID, construction or assembly work not carried out by SCHMID, sub-standard or unsuitable footings or foundations, chemical, electrochemical or electrolytic influences, or other reasons for which SCHMID is not responsible. Neither shall SCHMID be liable for security vulnerabilities in internal and/or external IT networks, nor for damages resulting from such vulnerabilities. Claims against SCHMID for damages which are attributable to insecure data links, attacks by hackers, unauthorized or authorized access (e.g. in the context of remote maintenance or remote access) or other inadequacies in the CUSTOMER's or a third party's IT systems or IT networks shall likewise be excluded.

14.12 For goods and services from sub-suppliers specified by the CUSTOMER, SCHMID shall accept no warranty obligations.

## **15. Consequences of non-performance or defective performance on the part of SCHMID**

15.1 In all cases of non-performance or defective performance not expressly covered by these Terms and Conditions, the CUSTOMER shall, provided that a breach of contract by SCHMID is proven and demonstrable, be entitled to set a reasonable grace period for SCHMID under threat of withdrawal from the contract in the case of non-compliance. If SCHMID culpably allows this grace period to expire without making use of it, the CUSTOMER shall have the right to rescind the contract in respect of the goods or services that were in breach of contract, and to claim reimbursement of payments already made in respect of the relevant part or portion.

15.2 In such a case, the following clause (clause 16) shall apply to any claims for damages which may be raised by the CUSTOMER and to the exclusion of any further liability. Moreover, the claim for damages shall be restricted to 3% (three percent) of the contract price for the goods and services in respect of which the contract is being rescinded.

## **16. Exclusion of any further liability of SCHMID**

16.1 All cases of breach of contract and their legal consequences, as well as all claims by the CUSTOMER, irrespective of the legal grounds on which they are raised, shall be governed exclusively by these Terms and Conditions. In particular, all claims not expressly set forth herein in respect of damages, reduction or cancellation of contract shall be excluded.

16.2 THE CUSTOMER SHALL UNDER NO CIRCUMSTANCES HAVE ANY CLAIM TO COMPENSATION FOR DAMAGES THAT HAVE NOT ARISEN TO THE SUPPLIED GOODS THEMSELVES, SUCH AS LOSS OF PRODUCTION, LOSS OF USE, THE COSTS OF REPLACEMENT FUEL AND EMERGENCY HEATING, LOSS OF CONTRACTS, LOSS OF INFOCME OR PROFIT, LOSSES SUSTAINED AS THE RESULT OF INJURY (INCLUDING DEATH) TO ANY PERSON, LOSS OR DAMAGE TO PROPERTY (INCLUDING, WITHOUT LIMITATION, PROPERTY HANDLED OR PROCESSED BY THE USE OF THE GOODS) OR ANY OTHER INDIRECT OR DIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES TO ANY PERSON, WHETHER BASED UPON BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, TORT, BREACH OF CONTRACT OR ANY OTHER THEORY, REGARDLESS OF WHETHER ANY REPLACEMENT, RETURN OR REFUND REMEDY SET FORTH ABOVE FAILS OF THIS ESSENTIAL PURPOSE OR FOR ANY OTHER REASON WHATSOEVER..THIS EXCLUSION OF LIABILITY SHALL NOT APPLY IF MANDATORY LAW DICTATES OTHERWISE.

19.2 This contract is subject to the law of the Province of Ontario, Canada; the UN Convention on Contracts for the International Sale of Goods dated 11 April 1980 is herewith excluded.

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**17. SCHMID's right of recourse, insurance obligation, product liability and product safety**

17.1 If, as a result of actions or failure to act on the part of the CUSTOMER or its vicarious agents, any persons are injured or property of a third party or parties is damaged, and if a claim is raised against SCHMID as a result thereof, the latter shall have right of recourse against the CUSTOMER.

17.2 The CUSTOMER is obliged to take out the necessary insurance for all risks in connection with this contract and with the operation of the system (e.g. public liability, insurance against claims relating to product liability or product safety, property insurance, etc.). In particular, the CUSTOMER is obliged to ensure that all third-party claims that could arise from the operation of the system are covered by the CUSTOMER's insurance. If a third party raises a claim against SCHMID for damages arising from the operation of the system, the CUSTOMER shall release and absolve SCHMID from this claim, and shall, if SCHMID so wishes, involve itself in the defence process against the claim, and shall bear all costs incurred as a result of the claim.

**18. Miscellaneous provisions**

Should any provision of these Terms and Conditions prove to be wholly or partly invalid or unenforceable, the remaining provisions will continue in full force and effect. The invalid or unenforceable provision shall be replaced by a new agreement that comes as close as possible to the original one in terms of its legal and commercial purpose.

**19. Place of jurisdiction and applicable law**

19.1 The place of jurisdiction for the CUSTOMER and for SCHMID shall be SCHMID's place of business, currently 40 University Avenue, Suite 904, Toronto, Ontario, M5J1T1, Canada. However, SCHMID shall also be entitled to sue the CUSTOMER at the CUSTOMER's place of business or at the location of the property (installation site of the system).

Signature of SCHMID: \_\_\_\_\_

Signature of CUSTOMER: \_\_\_\_\_