

PROMIX SOLUTIONS

GENERAL TERMS AND CONDITIONS OF SALE

These Terms and Conditions can be found on the Internet under www.promix-solutions.com

1. GENERAL

1.1 Definitions

"BUYER" means an individual or entity which signs the CONTRACT documents as counterpart to PROMIX SOLUTIONS.

"CONTRACT" means the PURCHASE ORDER plus all documents referred to therein.

"DELIVERY TERM" shall have the meaning as established in the version of the INCOTERMS in place as of the effective date of the contract.

"EFFECTIVE DATE" means the date of the ORDER CONFIRMATION. If BUYER expresses its objection to the ORDER CONFIRMATION within three (3) working days after receipt of the ORDER CONFIRMATION, EFFECTIVE DATE shall be the date on which BUYER and PROMIX SOLUTIONS reach common agreement on the CONTRACT.

"END USER" shall have the same meaning as BUYER. However, if the BUYER and END USER are not the same individual or entity, then the term "END USER" shall mean the individual or entity for which the BUYER is obtaining the SCOPE OF SUPPLY.

"ENGINEERING SERVICES" means engineering work included in the CONTRACT required to be carried out for the delivery of EQUIPMENT, FIELD SERVICES, STUDIES and such goods and or services offered.

"EQUIPMENT" means skid mounted equipment, process and mass transfer, mixer or other goods which are specified in the CONTRACT.

"EX WORKS" means an Ex Works delivery as defined in the version of the INCOTERMS in place as of the effective date of the contract in effect as of the date of delivery.

"FIELD SERVICES" shall mean the deployment of PROMIX personnel to a BUYER'S or END USER'S PLANT to provide technical assistance with specified maintenance, inspection, installation, repair and/or modification work or other services specified in the CONTRACT.

"FINAL ACCEPTANCE" means the document issued by the BUYER or the END USER at the beginning of the warranty period or, if no FINAL ACCEPTANCE document is issued, then the document evidencing shipment of the goods or completion of the services. For consignment goods, FINAL ACCEPTANCE will take place at the date of removal of goods from stock, usually at the point of consumption.

"GENERAL TERMS" means these General Terms and Conditions of Sale of PROMIX SOLUTIONS.

"INSTALLATION SERVICES" shall have the same meanings as "FIELD SERVICES".

"ORDER CONFIRMATION" means the document provided by PROMIX SOLUTIONS to BUYER as a response to BUYER'S purchase order documents either by e-mail, facsimile or as a hardcopy.

"PLANT" means the BUYER or END USER facility for which PROMIX SOLUTIONS work is produced and/or supplied or services provided.

"PURCHASE ORDER" means the purchase order documents issued by BUYER in the version confirmed by PROMIX SOLUTIONS in the ORDER CONFIRMATION. In case of non-substantial deviations between said purchase order documents and the ORDER CONFIRMATION, the version of the ORDER CONFIRMATION shall become the binding PURCHASE ORDER unless BUYER expresses its dissent within three (3) working days after receipt of the ORDER CONFIRMATION.

"SCOPE OF SUPPLY" means the goods and/or services to be delivered as specified in the CONTRACT and the pertaining documentation, to the extent explicitly specified in the PURCHASE ORDER and agreed upon by both parties.

"SPARE PARTS" means wear and tear goods not otherwise falling under the definition of Equipment.

- 1.2 BUYER is hereby given notice that any deviations from these GENERAL TERMS are expressly rejected unless such deviations are otherwise agreed upon in a mutually signed document.

The validity of offer is for a period of thirty (30) days commencing with the date of the offer, unless otherwise specified in writing by PROMIX SOLUTIONS.

- 1.3 The delivery encompasses the SCOPE OF SUPPLY and, unless otherwise mutually agreed in the PURCHASE ORDER, will be made EX WORKS.

- 1.4 In case of contradiction between CONTRACT documents, the following order of precedence shall apply:

- a) PURCHASE ORDER in the version accepted in the ORDER CONFIRMATION or other negotiated, agreed and mutually signed document, including all documents made a part thereof
- b) PROMIX SOLUTIONS offer
- c) These GENERAL TERMS
- d) BUYER'S request for an offer
- e) BUYER'S Purchase Terms and Conditions

- 1.5 All documents making part of the CONTRACT can be changed only by a written, duly signed document.
- 1.6 All information and data contained in brochures and price lists of PROMIX SOLUTIONS are only binding to the extent that they are by reference expressly included in the CONTRACT.
- 1.7 PROMIX SOLUTIONS shall be entitled to engage sub-suppliers for the performance of the CONTRACT.
2. DELIVERY
- 2.1 PROMIX SOLUTIONS shall deliver the SCOPE OF SUPPLY on the dates specified in the CONTRACT contingent upon BUYER fulfilling all contractual obligations, including but not limited to timely release of all input specifications, drawing approvals etc.
- 2.2 BUYER acknowledges and agrees that the delivery of the SCOPE OF SUPPLY may be delayed and re-scheduled in order to accommodate delays caused by:
- a) Events of Force Majeure as defined in this CONTRACT;
 - b) Failure of BUYER or BUYER'S representative to timely make any required advance payments;
 - c) Failure of BUYER or BUYER'S representative to timely provide;
 - I. revised or additional specifications;
 - II. approval drawings; or
 - III. other items, documentation or materials necessary to complete the SCOPE OF SUPPLY.
 - d) Any other reasons beyond PROMIX SOLUTIONS control
- 2.3 PROMIX SOLUTIONS reserves the right to suspend production of the SCOPE OF SUPPLY or terminate this CONTRACT in the event that BUYER fails to provide any required advance payments and/or to issue Letter(s) of Credit as agreed in the PURCHASE ORDER within fourteen (14) days of the due date of the advanced payment or Letter(s) of Credit.
- In such event, PROMIX SOLUTIONS reserves the right to charge BUYER for all losses and damages suffered by PROMIX SOLUTIONS by reason of such default.
- 2.4 Unless otherwise expressly agreed in writing in a document signed by PROMIX SOLUTIONS, PROMIX SOLUTIONS shall not be subject to any claim for liquidated damages or penalties related to the late delivery of the SCOPE OF SUPPLY.
- In case the BUYER fails to timely fulfill any of its contractual obligations including failure to make payments on time or failure to take delivery when called upon to do so by PROMIX SOLUTIONS or failure to provide necessary infrastructure and facilities to commence the perform of the CONTRACT, PROMIX SOLUTIONS is entitled to terminate the CONTRACT. In this case BUYER shall pay to PROMIX SOLUTIONS the costs and expenses incurred by PROMIX SOLUTIONS connected with work or services performed prior to the date of termination, including a reasonable margin as well as other costs and expenses, including cancellation charges under subcontracts, as PROMIX SOLUTIONS may incur in connection with such cancellation.
- 2.5 Transfer of risk of loss of or damage to the SCOPE OF SUPPLY shall be in accordance with the applicable Incoterms. If dispatch is delayed at the request of the BUYER or due to other reasons beyond PROMIX SOLUTIONS'S control, the risk of loss of the SCOPE OF SUPPLY shall pass to the BUYER at the original time the SCOPE OF SUPPLY was scheduled to leave PROMIX SOLUTIONS'S manufacturing facility. From this moment on, the SCOPE OF SUPPLY shall be stored and insured on the account and at the risk of the BUYER. Title and ownership shall be transferred to BUYER upon receipt of payment in full by PROMIX SOLUTIONS.
3. PRICE AND PAYMENT
- 3.1 The prices for the SCOPE OF SUPPLY are those stated in the CONTRACT and are fixed and firm until fulfillment of CONTRACT. For work carried out on a time basis, the prices shall be determined in accordance with the hourly rates specified in the CONTRACT. If no agreement on hourly rates has been made, the hourly rate applied by PROMIX SOLUTIONS for other customers and comparable work shall apply. All prices are exclusive of excise duties, VAT, sales or similar taxes and duties.
- 3.2 Unless otherwise agreed in writing, full payment for the SCOPE OF SUPPLY shall be due within thirty (30) days of issue of an invoice by PROMIX SOLUTIONS.
- 3.3 If BUYER disputes any item or charge listed in the invoice, BUYER shall state the item or amount of the charge in dispute and the reasons for such dispute in writing within such thirty (30) day time period. However, all undisputed amounts shall remain due as specified above.
- 3.4 At PROMIX SOLUTIONS discretion, an interest charge of six percent (6%) per annum will be charged against any outstanding balance effective as of the due date of the balance.
- 3.5 Unless otherwise agreed in writing, all uncontested payments shall be made according to the agreed terms of payment without any deductions for discounts, set-offs or otherwise.
- 3.6 In case of late payment, PROMIX SOLUTIONS may, after having notified the BUYER in writing, suspend its performance of the SCOPE OF SUPPLY until the open and due invoices have been paid.
- 3.7 If BUYER and PROMIX SOLUTIONS agreed on issuing a Letter of Credit by BUYER in favor of PROMIX SOLUTIONS, such Letter of Credit shall be irrevocable, unconditional, and issued by a first class worldwide active bank. The Letter of Credit shall remain valid until the delivery of the entire of SCOPE OF SUPPLY plus ninety (90) days. PROMIX SOLUTIONS reserves the right to approve the issuing bank. Withdrawal of the money shall be against the documents that are mutually agreed upon in writing.

4. INTELLECTUAL PROPERTY

4.1 BUYER shall provide the technical documentation (e.g. up-to-date drawings, descriptions, charts, instructions, etc.) that is necessary for the delivery of the SCOPE OF SUPPLY and is specified in the CONTRACT. BUYER confirms that BUYER is fully authorized to use (or have used) the technical documentation provided to PROMIX SOLUTIONS for the performance of the SCOPE OF SUPPLY by PROMIX SOLUTIONS or its sub-suppliers, respectively. In case BUYER would not be authorized to order said performance from PROMIX SOLUTIONS without violation of intellectual property rights of third parties, or if such right should be challenged, BUYER shall inform PROMIX SOLUTIONS without any delay. In this case, PROMIX SOLUTIONS shall stop the work until the approvals needed for the performance have been obtained.

4.2 Each party to the CONTRACT retains all rights to any technical documents provided to the other party. The party receiving such documents recognizes these rights and shall, without previous written consent of the other party, not make these documents available to any third party, either in whole or in part, nor use them for any purpose other than to fulfill the CONTRACT.

4.3 Any know-how, inventions, patents or copyrights or the like belonging to or provided by PROMIX SOLUTIONS and used for or developed in the course of the fulfillment of the CONTRACT by PROMIX SOLUTIONS shall remain PROMIX SOLUTIONS'S property, and no ownership shall be transferred to BUYER with respect to such know-how, inventions, patents and copyrights, independent of the hardware on which such know-how, inventions, patents or copyrights is made available (machinery, paper, electronic medium, etc.). However, BUYER shall be granted a limited right to use such know-how, invention, patents, copyright or the like for the operation, maintenance and repair of the SCOPE OF SUPPLY on a non-exclusive basis, which right shall **not** include the use of the said intellectual property for the reproduction of the SCOPE OF SUPPLY or parts thereof. If the SCOPE OF SUPPLY consists of ENGINEERING SERVICES, BUYER shall be permitted to use, on a non-exclusive basis, the documentation received for the purpose described in the CONTRACT. In case of doubt, ENGINEERING SERVICES provided for the development or construction of EQUIPMENT shall be deemed to be made available for the procurement of such goods from PROMIX SOLUTIONS solely.

4.4 To the best knowledge of PROMIX SOLUTIONS the SCOPE OF SUPPLY and any part thereof, in the particular form sold by PROMIX SOLUTIONS, shall not infringe any intellectual property rights of third parties. In the event of any patent infringement relating to the said SCOPE OF SUPPLY, PROMIX SOLUTIONS may, in its sole discretion, procure the right to use the SCOPE OF SUPPLY without impairing its suitability, or modify or replace it so that it is rendered non-infringing. The obligations of PROMIX SOLUTIONS set forth herein are contingent upon (i) PROMIX SOLUTIONS receiving prompt written notice from BUYER of such infringement; (ii) PROMIX SOLUTIONS receiving assistance

from BUYER in the defense; and (iii) the right of PROMIX SOLUTIONS to settle or defend.

4.5 The obligation under 4.4 above of PROMIX SOLUTIONS shall not apply to (i) the SCOPE OF SUPPLY or part thereof which has been manufactured according to BUYER'S design, (ii) services performed by using BUYER'S documentation, (iii) the use of the SCOPE OF SUPPLY or any part thereof in conjunction with any other product in a combination not furnished by PROMIX SOLUTIONS as part of the SCOPE OF SUPPLY, (iv) to products fabricated by using the SCOPE OF SUPPLY. As to any such equipment, service, product, part or use in such combination, PROMIX SOLUTIONS assumes no liability whatsoever for infringement of intellectual property rights of third parties, and BUYER shall indemnify and hold harmless PROMIX SOLUTIONS against any respective infringement claims. PROMIX SOLUTIONS shall cooperate with BUYER in the same manner as required by PROMIX SOLUTIONS under 4.4 (i) to (iv) herein above.

4.6 PROMIX SOLUTIONS'S copyrighted material shall not be copied by BUYER except for archiving purposes or to replace a defective copy.

5. INSTALLATION AND SITE PREPARATION

5.1 If installation services are a part of the SCOPE OF SUPPLY, it is the responsibility of the BUYER to prepare the site environmentally and to provide the required services, electrical wiring and conduit, dry compressed air and piping, gas supply and piping, tools for installation, water drain, permits, including work permits, licenses, approvals, etc. as well as whatever is required to uncrate and move the equipment to its location.

5.2 BUYER also undertakes to maintain the facilities upon which PROMIX SOLUTIONS'S personnel may be required to enter, in a safe condition, and to comply with all applicable laws, statutes and regulations governing workplace health and safety, and to give PROMIX SOLUTIONS personnel all instructions necessary. PROMIX SOLUTIONS shall make sure that its personnel will follow all instructions reasonably made by BUYER. The same applies vice versa in case BUYER'S personnel have to enter upon PROMIX SOLUTIONS'S facilities.

5.3 BUYER'S failure to comply with the obligations stated in Articles 5.1 and 5.2 above shall entitle PROMIX SOLUTIONS to either stop rendering its services, and/or postpone the delivery, and/or ask for additional charges for the lost time of its service personnel, such time to be calculated and charged in accordance with Article 3.

6. WARRANTY

Articles 6.1 through 6.4 contain specific warranties referring to various SCOPES OF SUPPLY. Only the warranty provision(s) referring to a specific SCOPE OF SUPPLY shall apply.

6.1 EQUIPMENT

- a) PROMIX SOLUTIONS shall remedy any defect arising within twelve (12) months from the date of initial operation of the EQUIPMENT or eighteen (18) months from the date of shipment, and, if dispatches, erection, supervision of erection and/or commissioning are delayed due to reasons beyond PROMIX SOLUTIONS control, the warranty period shall end not later than eighteen (18) months after notification that the EQUIPMENT is ready for dispatch (whichever date shall occur first). This warranty shall apply to defects resulting from faulty materials or faulty workmanship. Additionally, to the extent PROMIX SOLUTIONS has provided the design for the EQUIPMENT, this warranty shall also apply to defects resulting from faulty design.
- b) If requested to do so by BUYER in writing, and as BUYER'S sole and exclusive remedy, PROMIX SOLUTIONS agrees to, at its sole option, either repair or replace the faulty parts of the EQUIPMENT, or supply BUYER with non-defective EQUIPMENT or part thereof. These remedies shall be provided for the defects notified to PROMIX SOLUTIONS during the warranty period under the conditions defined in Article 6.5 herein.
- c) The warranty period for any EQUIPMENT which is repaired or replaced shall be for a period of twelve (12) months or the remainder of the original warranty period, whichever period is longer.
- 6.2 FIELD SERVICES**
- a) PROMIX SOLUTIONS warrants that the FIELD SERVICES will be performed as specified in the CONTRACT and will comply with applicable industry standards and practices. PROMIX SOLUTIONS shall remedy any defect arising within ninety (90) days from the date of completion of the FIELD SERVICES work and which are resulting from faulty workmanship performed by PROMIX SOLUTIONS. Defects resulting from insufficient or inappropriate documentation delivered by BUYER shall be remedied at BUYER'S cost.
- b) If requested to do so by BUYER in writing, and as BUYER'S sole and exclusive remedy, PROMIX SOLUTIONS shall at its sole option repair the defective FIELD SERVICES or re-perform such FIELD SERVICES. These remedies shall be provided for the defects notified to SULZER CHEMTECH during the warranty period under the conditions defined in Article 6.5 herein.
- c) All FIELD SERVICES work which is remedied shall be warranted for a period of ninety (90) days from the date of the completion of repair or reperformance.
- d) PROMIX SOLUTIONS shall bear the costs for the corresponding repair or the re-performance of work whether occurring at the PROMIX SOLUTIONS or BUYER or END USER facility to the extent that they are reasonable under the circumstances. BUYER or END USER shall grant PROMIX SOLUTIONS the first opportunity to remedy any defect in the FIELD SERVICES. If the BUYER or END USER has obtained the services of a third party to perform the FIELD SERVICES, PROMIX SOLUTIONS shall bear the costs for the corresponding repair or re-performance work provided that the BUYER or END USER has obtained PROMIX SOLUTIONS'S prior written approval.
- 6.3 ENGINEERING SERVICES**
- a) PROMIX SOLUTIONS'S obligations consist of using proper care and skills in performing the work described in the CONTRACT. Unless otherwise explicitly agreed upon in writing, PROMIX SOLUTIONS shall not provide any warranty for successful achievement of the results envisaged in the CONTRACT. Defects arising from faulty ENGINEERING SERVICES arising within six (6) months from completion thereof shall be re-performed by PROMIX SOLUTIONS at its own cost.
- b) The warranty period for any engineering services which have been re-performed under the warranty shall be for a period of six (6) months.
- 6.4 Performance Guarantee**
- Unless explicitly agreed upon in writing in the CONTRACT, PROMIX SOLUTIONS shall not provide performance guarantees.
- 6.5 General Conditions applicable to PROMIX SOLUTIONS'S Warranty**
- a) **Maximum Extension of Warranty Period**
- The warranty period for any part of the SCOPE OF SUPPLY which is repaired or replaced shall be for the applicable period specified under 6.1 through 6.3 or the remainder of the original warranty period, whichever period is longer. Under no circumstances shall the repaired, replaced or re-performed warranty period extend for a period of time which is greater than 50% of the original period.
- b) **Inspection of Equipment and Services**
- BUYER shall ensure that inspection of PROMIX SOLUTIONS'S SCOPE OF SUPPLY and the issuance of a written notice of FINAL ACCEPTANCE shall occur within seven (7) days of receiving SCOPE OF SUPPLY. If a written notice of FINAL ACCEPTANCE is not received, then FINAL ACCEPTANCE will be deemed to have occurred fourteen (14) days after BUYER or END USER has received PROMIX SOLUTIONS'S EQUIPMENT or ENGINEERING SERVICES or fourteen (14) days after the completion of PROMIX SOLUTIONS FIELD SERVICES.
- c) **Place where Warranty Work will be executed**
- PROMIX SOLUTIONS reserves the right to require that BUYER or END USER return the SCOPE OF SUPPLY or parts thereof to PROMIX SOLUTIONS production facility to provide proper warranty service. In such cases, PROMIX SOLUTIONS shall reimburse BUYER or END USER for the reasonable costs paid for sea or land transportation of the SCOPE OF SUPPLY. If the return of the SCOPE OF SUPPLY to PROMIX SOLUTIONS

production facility is not required, then PROMIX SOLUTIONS shall use its best efforts to perform the warranty work at BUYER'S or END USER's facility, and as soon as reasonably practicable after receipt of written notification by the BUYER or the END USER. BUYER or END USER shall make the SCOPE OF SUPPLY available for PROMIX SOLUTIONS to repair or replace. PROMIX SOLUTIONS shall not be responsible for the disassembly, re- moval or reinstallation of the SCOPE OF SUPPLY.

d) Early termination of Warranty Period

The warranty periods stipulated in 6.1 through 6.3 above shall terminate if BUYER or a third party undertake inappropriate or improper modification or repairs, or if the BUYER, in case of a defect, does not as soon as reasonably possible take appropriate steps to mitigate damages and to notify PROMIX SOLUTIONS in writing of its obligation to remedy such defect.

e) Exclusion from PROMIX SOLUTIONS'S Warranty

Excluded from PROMIX SOLUTIONS warranty and liability for defects are all deficiencies which cannot be proved to have their origin in bad material, faulty design (if applicable), or poor workmanship. Also excluded from PROMIX SOLUTIONS warranty and liability for defects are deficiencies resulting from normal wear and tear, improper maintenance, failure to observe the operating instructions provided by PROMIX SOLUTIONS or deficiencies resulting from other reasons beyond PROMIX SOLUTIONS'S control, including damages caused by erosion or corrosion. For supplies and services of those subcontractors prescribed by the BUYER, PROMIX SOLUTIONS assumes warranty, guarantee and/or liability for defects only to the extent that such subcontractors assumed warranty, guarantee and/or liability obligations in its contract with PROMIX SOLUTIONS.

f) Dismantling and Reassembly

To the extent necessary to remedy the defect, BUYER or END USER shall, at their own expense, arrange for any dismantling and reassembly of EQUIPMENT.

g) No Additional Warranties or Representations

PROMIX SOLUTIONS MAKES NO WARRANTY OR REPRESENTATION TO THE SCOPE OF SUPPLY OTHER THAN AS SPECIFIED IN THIS SECTION, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED,

6.7 Hazard Warning Responsibility

BUYER and PROMIX SOLUTIONS acknowledge that each have respective obligations with respect to maintaining compliance with all safety and health related regulations concerning SCOPE OF SUPPLY. BUYER is familiar with the SCOPE OF SUPPLY and acknowledges its separate and independent knowledge of such

risks, which are known in BUYER'S industry. BUYER shall maintain compliance with all safety and health related governmental requirements concerning SCOPE OF SUPPLY and shall take all reasonable and practical steps to inform, warn, and familiarize its employees, agents, contractors, and customers with all hazards associated therewith, including handling, shipment, storage, use, and disposal. BUYER assumes as to its own employees, its independent contractors, and subsequent purchasers of the SCOPE OF SUPPLY sold hereunder, all responsibility for any and all necessary warnings or other precautionary measures. BUYER shall defend at its own expense, indemnify fully and hold harmless PROMIX SOLUTIONS and its parents, subsidiaries, and affiliates and its and their agents, officers, directors, employees, representatives, successors, and assigns from and against any and all liabilities, losses, damages, demands, claims, penalties, fines, actions, suits, legal, administrative or arbitration proceedings, judgments of any jurisdiction, costs and expenses (including, but not limited to, attorney's fees and related costs) arising out of or in any manner related to BUYER'S failure to provide necessary warnings or other precautionary measures in connection with the SCOPE OF SUPPLY sold hereunder.

7, OVERALL LIMITATION OF LIABILITY

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE CONTRACT, INCLUDING ALL DOCUMENTS FORMING A PART OF THE CONTRACT AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL PROMIX SOLUTIONS BE LIABLE TO THE BUYER OR ITS CUSTOMER FOR ANY LOSS OF PROFIT, LOSS OF CONTRACTS OR EARNINGS, INTERRUPTION OR LOSS OF PRODUCTION OR LOSS OF USE OR LOSS OF OPPORTUNITY, DELAY IN DELIVERY OR CLAIMS BY THE BUYER'S CUSTOMER FOR SUCH DAMAGES OR BUSINESS, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER SUCH LIABILITY IS BASED ON CONTRACT, INDEMNITY, TORT (INCLUDING NEGLIGENCE), STATUTE OR ANY OTHER BASIS OF LEGAL LIABILITY. THE REMEDIES OF BUYER SET FORTH HEREIN ARE EXCLUSIVE, AND PROMIX SOLUTIONS'S LIABILITY WITH RESPECT TO ANY CONTRACT OR SALE OR ANYTHING DONE IN CONNECTION THEREWITH, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), UNDER ANY WARRANTY, STRICT LIABILITY OR OTHERWISE SHALL IN TOTAL NOT EXCEED 100% OF THE CONTRACT PRICE TO BE PAID TO PROMIX SOLUTIONS, UNLESS CLAIMS ARISE DIRECTLY FROM GROSS NEGLIGENCE OR WILFUL MISCONDUCT OF PROMIX SOLUTIONS.

8. EXPORT AND OTHER GOVERNMENTAL DOCUMENTS

8.1 PROMIX SOLUTIONS undertakes to provide the documents required by the authorities at PROMIX SOLUTIONS place for the manufacturing and transportation EX WORKS of the SCOPE OF SUPPLY.

8.2 BUYER undertakes to provide all other documents required, e.g. documents required by an authority at

BUYER'S or BUYER'S customer's place, or the place where the SCOPE OF SUPPLY will be used.

8.3 PROMIX SOLUTIONS, BUYER and END USER shall support and assist each other without undue delay with obtaining any necessary information or documentation required by any authority in connection with the CONTRACT. PROMIX SOLUTIONS acceptance of the CONTRACT shall be subject to the receipt of all necessary export authorizations required from any governmental authority which has jurisdiction over this CONTRACT.

8.4 The BUYER hereby represents and warrants that it is, and will remain in compliance with the requirements of all applicable export laws and regulations, including but not limited to the U.S. Export Administration Regulations and International Traffic in Arms Regulations. Such requirements include, but are not limited to obtaining all required authorizations or licenses for the export or re-export of any controlled item, product, article, commodity, software or technology. Without limiting the generality of the foregoing, the BUYER hereby represents and warrants that it has not been, and is not currently, debarred, suspended or otherwise prohibited or restricted from exporting, re-exporting, receiving, purchasing, processing or otherwise obtaining any item, product, article, commodity, software or technology regulated by any agency of the United States or any other state. The BUYER agrees to indemnify and hold harmless PROMIX SOLUTIONS from any costs, penalties or other losses caused by, or related to, any violation or breach of the warranties contained in this provision.

9. FORCE MAJEURE

9.1 PROMIX SOLUTIONS shall not be liable for any non-performance, loss, damage, or delay due to acts of God such as but not limited to severe weather conditions, fire, flood or war, riots, strikes or labor difficulty, governmental acts such as but not limited to trade restrictions including embargoes, acts of the BUYER or END USER, delays in transportation, inability to obtain necessary labor or materials from usual sources, or other causes beyond the reasonable control of PROMIX SOLUTIONS. In the event of delay in performance due to any such cause, the date of delivery or time for completion will be extended to reflect the length of time lost by reason of such delay. If the grounds for Force Majeure continue for more than six (6) months, either PROMIX SOLUTIONS or BUYER may terminate the CONTRACT upon seven (7) days written notice to the other party.

9.2 PROMIX SOLUTIONS shall be entitled to be compensated for the extra costs caused by the interruption, or, in case of termination, for the work done prior to termination and the expenses for non-cancelable procurements. BUYER shall be entitled to receive the work for which it has paid.

10. FREE ISSUE MATERIALS

Materials supplied by BUYER to PROMIX SOLUTIONS (e.g. samples to be processed or tested, product for usage in performance tests, materials to be used for

implementation in the SCOPE OF SUPPLY, etc.) shall at all times remain the property of BUYER and shall be sufficiently covered under BUYER'S property insurance policy. Subject to Article 6 and 7 hereinabove, PROMIX SOLUTIONS shall be solely liable for damages caused by gross negligence or willful misconduct to FREE ISSUE MATERIALS.

11. MISCELLANEOUS

11.1 Applicable Laws and Jurisdiction

a) The CONTRACT shall be construed and shall be interpreted in accordance with the laws of Switzerland excluding and without application of any conflict of law rules.

b) Nothing contained in this CONTRACT shall limit the rights of PROMIX SOLUTIONS available under the applicable law.

c) In case of a dispute, the parties shall make their best efforts to resolve such dispute amicably. If an amicable resolution should not be possible, the competent court at PROMIX SOLUTIONS's location shall have exclusive jurisdiction. However, PROMIX SOLUTIONS reserves the right to initiate a claim against BUYER at BUYER'S location.

11.2 Assignment

Any attempt to assign, transfer, or delegate any of the rights, duties or obligations herein to a third party without prior written consent of the other party shall render such attempted assignment or transfer null and void. PROMIX SOLUTIONS affiliated companies shall not be considered third parties for this purpose.

11.3 Waiver of Rights

PROMIX SOLUTIONS or BUYER'S failure to exercise any of its rights shall not constitute or be deemed a waiver or a forfeiture of such rights.

11.4 Severability

If a provision of the CONTRACT is determined to be void or unenforceable, this finding shall not render other provision void or unenforceable, and PROMIX SOLUTIONS and BUYER shall make their best endeavors to replace such provision by a valid one covering the original commercial intention as far as legally possible.