

# GENERAL TERMS OF BUSINESS

## 1. GENERAL CONDITIONS

The terms and conditions of business set down herein are binding for all current and future transactions. Any deviations, including oral agreements, require written confirmation from the supplier before becoming effective. Any contrary terms of business held by the purchaser are not binding on the supplier, whether the purchaser is notified or not.

## 2. QUOTATIONS

All quotations for goods and services are made without obligation by the supplier who reserves the right of prior sale of said goods and services. All technical data contained in the quotation, e.g. illustrations, drawings, weights and dimensions are to be considered approximate unless otherwise stated. All documentation and the information contained therein relating to the quotation remains the property and copyright of the supplier. Said documentation and information must be held in the strictest confidence. Passing on, reproducing, copying, transmitting in whole or in part to third parties in any form, including verbally, electronically, optically etc. is only allowed if the written permission of HAMMELMANN Maschinenfabrik GmbH has been obtained. Nor is it permitted to store such information in electronic/digital data retrieval systems. The supplier reserves the right to request the return of said documentation at any time.

## 3. SCOPE OF DELIVERY

The scope of delivery is defined by that, which is written in the supplier's confirmation of order. This also applies to services (see 6). Any partial supply of goods and services cannot be rejected and the purchaser is obliged to make settlement against intermediate invoices received for partial supply of goods and services in accordance with the supplier's terms of payment (see 7). Any installation, operation and maintenance information contained within the scope of delivery become a part of these Terms and Conditions of Business.

## 4. PRICES

All prices are ex works Oelde and are exclusive of legal sales tax, packing, loading, freight, duties and insurance. Orders which are not subject to fixed prices are invoiced at the list price effective on the date of delivery. The supplier retains the right to adjust the price should there be a significant increase in material, labour and other related costs affecting prices. Any modifications requested by the purchaser after receipt of confirmation of order will also result in price adjustments. In the case of servicing and repair contracts the supplier will not be required to remit the value of waste or scrap material.

## 5. DELIVERY DATES

All delivery dates quoted are approximate and given without obligation. The period quoted begins two complete working days after the clarification of all design/specification data, receipt of releases, approvals etc. and the crediting to the supplier's account of any agreed payments. Actual delivery date is deemed to be that date upon which the supplier notifies or advises the purchaser of shipment. As a precondition of the supplier meeting the delivery date, the purchaser must supply any necessary data, approvals etc. and comply with any agreed terms and conditions of payment including those pertaining to previous transactions. Delays caused by the supplier's subcontractors, Acts of God and other unforeseen and exceptional circumstances, i.e. acts of war or terrorism, lockouts, strikes, natural disasters, administrative intervention, failure of power supplies, lack of freight facilities, material shortages and operational breakdowns allow the supplier an appropriate extension of time to effect delivery. This is also the case if the supplier's subcontractors are effected by such circumstances. In the event that such circumstances prevent delivery entirely, the supplier is freed from any obligation. The purchaser will be informed immediately upon commencement and ending of any such circumstances and if delivery is not effected within a suitable period of time, the purchaser may withdraw from the agreement. In the case of an extended delivery date or if the supplier is released from his delivery obligations, the purchaser shall not be entitled to make financial claim against the supplier.

## 6. PURCHASER'S OBLIGATIONS RESULTING FROM PROVISION OF CONSULTING, PLANNING, TESTING AND DESIGN SERVICES etc.

If the provision by the supplier of the above described services does not result in the receipt of any order or if only the above mentioned services were requested, the purchaser will be invoiced in accordance with the service fee regulations for engineers (LHO). Individually this fee amounts to 14 % of the project value. In the case of an order being received, a portion of the fees can be deducted from the value of the order. Any information, in any form, imparted by the supplier to the purchaser during the provision of the above mentioned services remains the property of HAMMELMANN Maschinenfabrik GmbH and must not be revealed in whole or in part by any means without the written permission of the supplier. Failure to observe this condition entitles HAMMELMANN Maschinenfabrik GmbH to claim unlimited compensation.

## 7. TERMS OF PAYMENT

Unless otherwise agreed, the purchase price shall be paid with one third at the formation of the contract and one third when the supplier notifies the purchaser that the product, or the essential part of it, is ready for delivery. Final payment shall be made when the product is delivered. Payment shall be made within 30 days of the date of the invoice. Whatever the means of payment used, payment shall not be deemed to have been effected before the supplier's account has been fully and irrevocably credited. If the purchaser fails to pay by the stipulated date, the supplier shall be entitled to interest from the day on which payment was due. The rate of interest shall be as agreed between the parties. If the parties fail to agree on the rate of interest, it shall be 8 percentage points above the rate of the main refinancing facility of the European Central Bank in force on the due date of payment. In case of late payment the supplier may, after having notified the purchaser in writing, suspend his performance of the contract until he receives payment. If the purchaser has not paid the amount due within three months, the supplier shall be entitled to terminate the contract by notice in writing to the purchaser and to claim compensation for the loss he has incurred. The compensation shall not exceed the agreed purchase price.

## 8. RETENTION OF TITLE

The products shall remain the property of the supplier until paid for in full to the extent that such retention of title is valid under the applicable law.

The purchaser shall at the request of the supplier assist him in taking any measures necessary to the product in the country concerned.

The retention of title shall not affect the passing of risk under Clause 11.

## 9. GUARANTEE

The supplier's liability is limited to defective materials, poor workmanship, inadequate design and misrepresentation of technical data. The guarantee periods start with the day of shipment and are as follows:

24 months for one-shift operations,

12 months for two-shift operations,

6 months for three-shift operations,

but no more than 2000 operating hours providing that all operating and maintenance instructions are observed and general operations are carried out by trained and specialised personnel. The purchaser is obliged to immediately check the received goods for defects of any kind and all other features guaranteed by supplier.

The supplier must be informed in writing of any obvious defects within one week. The supplier must be notified of hidden defects as soon as they are discovered. The supplier must be given an opportunity to appraise the defects on site. Goods or parts claimed under the guarantee must be returned free of charge if requested by supplier. The purchaser is obliged to stock parts properly at his own costs. If a claim is justified, the supplier may choose either to re-machine or replace the defective parts or credit the purchaser for the reduced value of the goods. Returned parts become the property of the supplier. The purchaser is obliged to allow a suitable and appropriate time to enable the supplier to eliminate the failures. Should this suitable and appropriate time be denied, the supplier is released from his obligations to eliminate the defect. If replacement or repair has not been effected within the given time, purchaser is entitled to cancel the contract or claim for price reduction. Liability for defect does not extend to normal wear or to any defects which may result from the following:

Unsuitable or improper use, incorrect assembly or commissioning by the purchaser or third parties, incorrect or negligent treatment, excessive stress, unsuitable operation methods, unapproved replacement parts and incorrect replacement materials, chemical and electrochemical influences as far as the same have not been caused by supplier.

The supplier is not liable for any improper modifications and repair works and their consequences performed through purchaser or third parties. As far as parts from sub-suppliers are concerned, supplier's liability is limited only to the subcontractor's liability under their terms and conditions of business. If requested by the purchaser, the supplier is obliged to provide the name and address of a sub-supplier. If work is carried out in accordance to the purchaser's design features, the supplier is not obliged to check on the correctness of the data made available. Other claims of the purchaser, especially with regard to claims for damages, which are not in direct connection to the supplied goods, are excluded, unless it is proven that they are based on intention or gross negligence.

## 10. GENERAL LIMITED LIABILITY

The supplier's liability effects exclusively the agreement revealed in above mentioned section. Claims resulting from impossibility of delivery and service, infringement of secondary contractual obligations, from negligence when contract was concluded or committed tort are excluded, unless they are based on intention or gross negligence by supplier or his various agents. Supplier's liability extends only to a period of 24 months after receipt of goods or provision of services. Any claims made after 24 months are invalid.

## 11. SHIPMENT, PACKING AND PASSING OF RISK

The risk is transferred to the purchaser after merchandise has been handed over to the carrier but latest when goods have left the workshop area. When goods are ready for dispatch and shipment or acceptance is delayed for reasons not within the responsibility of supplier, the risk is transferred to purchaser as soon as he has been notified of readiness for shipment. If goods ready for dispatch are not called for, supplier is entitled to dispatch the goods either according to his own choice or store them at the purchaser's cost. If shipment or consignment is delayed upon purchaser's request, supplier is entitled to charge storage costs of 0.5 % of invoice value for each commencing month, starting one month after notification of readiness for dispatch. Storage costs are limited to 5 % of goods value unless it is proven that higher costs have been incurred. Supplier is not obliged to but reserves the right to insure the goods against damage in transit in the purchaser's name and invoice the purchaser for insurance costs incurred. Times for collection are to be jointly agreed upon. No liability is taken over for waiting times. Packing is charged at cost price and cannot be returned.

## 12. JURISDICTION

Place of jurisdiction and local venue depend upon the applicable law to be observed. Place of jurisdiction for service and payment is Oelde. Applicable is the law of the Federal Republic of Germany. Where the contract is governed by German Law, the present amendment shall apply jointly with the ORGALIME Conditions in order to pay due regard to the provisions of the German Civil Code BGB concerning standard business conditions.

Note: The "Convention on Contracts for the International Sale of Goods" – usually named as Vienna Convention of April 11<sup>th</sup> 1980 – might be applied to the contract. If this is not the intention of the parties, a stipulation to the contrary will have to be expressly mentioned and agreed upon.

Any disputes arising from the contract have to be submitted to the court having jurisdiction over the place where the headquarters of HAMMELMANN Maschinenfabrik GmbH is situated.

## 13. LIABILITY OF CONTRACT

If one of the conditions of the general terms of business or of the other contractual agreements is or becomes no longer applicable, validity of the contract remains unaffected. The contract partners are obliged to replace the invalid term by a legally permissible arrangement which comes closest to the purpose aimed at.

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