



General Terms and Conditions for Deliveries and Services of AUMUND Fördertechnik GmbH

Issued January 2015

I. Basic conditions

1. Definitions

1.1. These "General Terms and Conditions for Deliveries and Services" are hereinafter called "TERMS".

1.2. "VENDOR" in the sense of the TERMS is AUMUND Fördertechnik GmbH.

1.3. "DELIVERIES" in the sense of the TERMS are all deliveries and services of VENDOR to BUYER.

1.4. "CONTRACT" in the sense of the "TERMS" is the written agreement between BUYER and VENDOR, including all annexes and supplements in the written form as agreed here-to which refer to the contents and performance of the DELIVERIES.

1.5 "ACCEPTANCE" in the sense of the TERMS is a process in which the compliance of the DELIVERIES or a part thereof with the CONTRACT is bindingly determined for both parties.

1.6 "BUYER" in the sense of the TERMS is the company (or its legal successor) or the person (or its legal successor) that has awarded VENDOR with the order to perform the DELIVERIES.

2. All deliveries and services of VENDOR (hereinafter called "DELIVERIES") are based on these TERMS, insofar as they have not been altered or supplemented by the CONTRACT.

3. Terms and conditions of purchase or general terms and conditions of BUYER which differ from these TERMS will not become an integral part of the CONTRACT, even if VENDOR accepts and/or performs the order without any reservations.

4. In the absence of any other agreed term, the CONTRACT comes into force upon receipt of VENDOR's order confirmation in writing.

5. VENDOR's written order confirmation is decisive for the type and scope of the DELIVERIES. If no explicit order confirmation has been issued, the quotation shall have decisive effect. Any collateral agreements and amendments require VENDOR's written confirmation.

6. BUYER shall bear any costs for additional DELIVERIES which may become required due to local conditions, the joining of installation parts, orders, directives or regulations of public institutions issued after conclusion of the CONTRACT, or because the competent local authorities interpret the generally accepted rules of technology differently.



7. VENDOR reserves the right to carry out modifications to and improvements in construction, manufacture and design insofar as no substantial changes are made to the DELIVERIES and said changes can be accepted as reasonable by BUYER.

8. Intellectual Property

8.1. VENDOR reserves the right of ownership, usage and copyright to all technical and economical information in written and digital form, which BUYER may have received from VENDOR prior to contract conclusion or during contract implementation; third parties may only be granted access to such information with VENDOR's explicit approval.

8.2. BUYER may use the aforementioned information only to implement the CONTRACT, to operate, maintain and service the supplied items or the installation into which the supplied items have been installed in accordance with the CONTRACT. BUYER does not receive any right to use the aforementioned information to duplicate or expand the DELIVERIES.

II. Prices and Payments

1. In the absence of any special agreement, the prices shall be effective "ex works", including loading in the works, however, excluding packaging and unloading. If legally applicable, the value-added tax at the respective statutory rate shall be added to the prices.

2. In the absence of any special agreement, the payment shall be effected without any deduction into VENDOR's account as follows:

- 30% down payment within seven calendar days subsequent to receipt of the order confirmation
- 60% within seven calendar days subsequent to notification of the VENDOR for the readiness for dispatch of the major part
- Remaining amount within one month subsequent to transfer of the risk, however, 6 months after delivery, at the latest

3. BUYER shall only be entitled to withhold payments, if its counterclaims are undisputed or have been determined as legally effective.

4. The right to offset payment against counterclaims from other legal relationships is only available to BUYER to the extent that these are undisputed or have been determined as legally effective.

III. Delivery Time, Delivery Delay

1. The delivery time results from the agreements of the contractual parties. Its compliance by VENDOR presupposes that all commercial and technical questions have been clarified between the contractual parties and that BUYER has met all statutory or contractual obligations incumbent on it such as submission of the required official certificates or approvals or that a down payment has been made. Should this not be the case, the delivery time shall be appropriately extended. This shall not apply, if VENDOR is responsible for the delay.

2. The obligation to compliance with the delivery time is subject to the correct and timely delivery by our suppliers. VENDOR shall notify as soon as possible of any delays which should emerge.



3. The delivery time shall be deemed to have been observed, if the DELIVERIES have left VENDOR's works by the agreed date or the notification of readiness for dispatch has been issued. Should an ACCEPTANCE be required, the date of ACCEPTANCE - with the exception of a justified refusal of ACCEPTANCE - shall be decisive to determine the VENDOR's observance of the date, in the alternative, the notification of the readiness for acceptance.

4. Should the dispatch or ACCEPTANCE of the DELIVERIES be delayed on BUYER's request, or for reasons, for which BUYER is responsible, BUYER shall, beginning one month after notification of the readiness for dispatch or readiness for acceptance, bear the costs incurring as a result of the delay, above all those due to storage, amounting to at least 0.5% of the invoice amount per month for storage at VENDOR's works. After setting a reasonable deadline which has unsuccessfully expired, VENDOR shall have the right to dispose differently of the stored items, and to supply BUYER within a reasonably extended deadline.

5. Should the failure to meet the delivery time be caused by force majeure, industrial conflicts or other events beyond VENDOR's control, the delivery time shall be appropriately extended. VENDOR shall notify BUYER of start and end of such circumstances at the earliest convenience.

6. Should the complete performance prior to the passage of the risk become definitely impossible for VENDOR, BUYER can withdraw from the CONTRACT without setting a deadline. Additionally, BUYER can withdraw from the CONTRACT, if performance of part of the DELIVERIES related to an order becomes impossible and BUYER has a justified interest in refusing the partial delivery. Should said circumstance not apply, BUYER shall pay the contractual price related to the partial delivery. The same shall apply in the event of VENDOR's inability to perform. In all other respects, sections VII.2 and 3 shall apply. Should the impossibility or inability to perform occur during BUYER's delay of acceptance, or should BUYER be solely or largely responsible for said circumstances, BUYER shall be obliged to provide compensation therefor.

7. Should VENDOR get into delay and should BUYER incur damages therefrom, BUYER shall be entitled to claim a lump sum as compensation for delay. Said compensation shall amount to 0.5% per each full week of delay, but no more than in total 5% of the value of that part of the entire delivery which cannot be used in time or according to the CONTRACT as a result of said delay. Should BUYER set a reasonable deadline for VENDOR to perform the service after maturity - in due consideration of the statutory cases of exemption - and should said deadline not be met, BUYER shall be entitled to withdrawal within the framework of the statutory regulations. BUYER shall undertake to declare on VENDOR's request during a reasonable period whether it will exercise said right of withdrawal. Further claims from delivery delay shall be based exclusively on sections VII.2 and 3 of these TERMS.

IV. Passage of the Risk, Acceptance

1. The risk shall pass to BUYER when the supplied items have left the works, this shall also apply in the event of partial deliveries or if VENDOR also is responsible for other services such as shipping costs or delivery and installation. Should an ACCEPTANCE be required, this shall be decisive for the passage of the risk.



2. The ACCEPTANCE shall be performed by the ACCEPTANCE date, or alternatively, immediately after VENDOR's notification of the readiness for acceptance. BUYER may only refuse the ACCEPTANCE, if substantial defects exist.
3. Should the dispatch or ACCEPTANCE be delayed or fail to be performed for reasons beyond VENDOR's control, the risk shall pass to BUYER on the day of the readiness for dispatch or ACCEPTANCE. VENDOR undertakes to take out the insurances at BUYER's expense, provided that BUYER demands such insurances.
4. Should documentation form part of the DELIVERIES whose preparation requires BUYER to participate, and should complete submission of said documentation not be possible at the date of acceptance or notification of the readiness for acceptance, this shall not be deemed to be a substantial defect.
5. Partial deliveries shall be permitted if not unreasonable for BUYER.

V. Retention of Title

1. VENDOR shall retain the title on the supplied items until all of VENDOR's claims against BUYER from the business relationship have been paid, including claims arising in the future, and those from contracts concluded at the same time or later. This shall also apply, if individual or all of VENDOR's claims have been included into a current invoice and the balance has been drawn and accepted. In the event of payments by cheque or bill, the retention of title shall also cover the discharge of the bill accepted by VENDOR from BUYER, and shall not expire already on the crediting of the cheque received.
2. VENDOR shall be entitled to arrange for the insurance of the supplied items against theft, breakage, fire, water and other damage at BUYER's expense, unless BUYER can furnish proof of having taken out those insurances itself.
3. As long as the title has not been passed, BUYER shall immediately notify VENDOR in writing, as soon as supplied items are seized or are otherwise subjected to third party interference.
4. Should BUYER act contrary to the CONTRACT, in particular in the event of delay in payment, VENDOR shall be entitled, after unsuccessful reminder, to take back the supplied items and BUYER shall be obliged to surrender them.
5. Due to the retention of title, VENDOR can only demand the surrender of the supplied items, if it has withdrawn from the CONTRACT.
6. The petition for opening insolvency proceedings relating to BUYER's assets shall entitle VENDOR to withdraw from the CONTRACT and to demand the immediate surrender of supplied items.
7. BUYER shall be entitled to the resale of the supplied items in the normal course of business. BUYER herewith assigns already now to VENDOR its claims from the resale of the supplied items amounting to the final amount of invoice (including value-added tax) agreed with VENDOR.

VENDOR undertakes not to collect its claims as long as



- BUYER duly fulfils its payment obligations or
- authority to collect has not been revoked or
- no petition for opening insolvency proceedings relating to BUYER's assets has been filed.

8. Processing or reshaping of the supplied items shall always be carried out by BUYER for VENDOR. In this event, VENDOR's right of retention on the supplied items shall continue to be effective for the reshaped item. Should the item subject to retention of title be processed or combined with other items which do not belong to VENDOR, VENDOR shall acquire co-ownership of the new item in the ratio of the value of the item subject to retention of title to the other items at the time of processing or combination.

BUYER shall keep the property or joint property in safe custody for VENDOR.

VI. Warranty and Claims for Defects

VENDOR shall be liable for material defects and defects of title to the exclusion of further claims - subject to a different provision in section VII - as follows:

1. Material defects

1.1. VENDOR shall assume no liability in the following cases:

Inappropriate or improper use, faulty assembly or commissioning by BUYER or third parties, natural wear and tear, erroneous or negligent handling, improper maintenance, unsuitable operating media, deficient construction work, unsuitable building site, chemical, electrochemical or electrical influences - unless VENDOR shall be responsible for such circumstances.

1.2. Notwithstanding mandatory warranty provisions, wilful or gross negligent acts, VENDOR shall not guarantee that the supplied items are suitable for an intended purpose or conform to the requirements and stresses foreseen by BUYER, should BUYER data be outstanding, incomplete or wrong, unless such suitability was expressly assured in writing.

1.3. DELIVERIES which turn out to be inadequate due to a circumstance arising prior to the passage of the risk, shall, at VENDOR's discretion, be reworked by VENDOR or replaced by DELIVERIES free from defects.

VENDOR shall be immediately notified of the detection of such defects. Replaced defective parts shall become the property of VENDOR.

1.4. BUYER, after coordination with VENDOR, shall grant the required time and opportunity to carry out all rework and replacement deliveries deemed to be necessary by VENDOR; otherwise VENDOR shall be released from the liability for the consequences arising therefrom. Only in urgent cases where the operational safety is at risk, or to prevent disproportionately large damage, of which VENDOR must be notified immediately, BUYER shall be entitled to eliminate the defect itself, or have said defect eliminated by a third party, and to demand compensation for the required expenditure from VENDOR.

1.5. Insofar as the complaint turns out to be justified, VENDOR shall bear the direct costs of the rework or replacement delivery, including the shipping costs. VENDOR shall only be obliged to accept the costs of removal and installation as well as of any necessary provi-



sion of the required fitters and auxiliary staff including travel expenses, if VENDOR is responsible for the defect in the DELIVERIES and to the extent, as this takeover of costs is not an unreasonable burden imposed on VENDOR.

1.6. Within the framework of statutory regulations, BUYER has the right to withdraw from the CONTRACT, if, taking into account the statutory exceptions, VENDOR should fail to observe an appropriate grace period set for the rework or replacement delivery of a material defect. Should only a minor defect exist, BUYER shall only be entitled to reduce the contract price. In any and all other respects, the right to reduce the contract price shall be excluded.

1.7. Should BUYER or a third party carry out improper rework, VENDOR shall not be liable for the consequences arising therefrom. The same shall apply to all changes to the supplied items carried out without VENDOR's prior approval.

1.8. Further claims shall be based exclusively on sections VII. 2 and 3 of these TERMS.

2. Defects of title

2.1. If the use of the DELIVERIES at the place of application causes an infringement of industrial property rights or copyrights, VENDOR shall principally provide BUYER with the right to further use at VENDOR's expense, or modify the DELIVERIES in a way deemed reasonable for BUYER that the infringement of industrial property rights no longer exists. Should this be impossible under reasonable economic conditions or within a reasonable time period, BUYER shall be entitled to withdraw from the CONTRACT. Under the aforementioned conditions, VENDOR shall also have the right to withdraw from the CONTRACT.

Furthermore, VENDOR shall indemnify BUYER against undisputed or legally determined claims of the owners of the corresponding rights.

2.2. Subject to the provisions in sections VII.2 and 3, VENDOR's obligations mentioned in section VI. 2.1. are final with respect to property or copyright infringements.

They shall only apply, if

- BUYER notifies VENDOR immediately of asserted claims of industrial property or copyright infringements,
- BUYER supports VENDOR to a reasonable extent in defending against such asserted claims or enables VENDOR to carry out the modification measures according to section VI. 2.1,
- VENDOR retains the right to execute all measures for fending off, including out of court settlements
- the defect of title is not attributable to an instruction issued by BUYER and
- the infringement of right did not arise from the fact that BUYER has modified the DELIVERIES without authorisation or used the same in a way that does not comply with the CONTRACT.

VII. Liability of VENDOR, Exclusion of Liability

1. Where, as a result of culpably omitted or faulty suggestions or consultations, either before or after conclusion of CONTRACT, or as a result of culpable infringements of other contractual additional obligations, in particular in case of erroneous operating and maintenance instructions for the supplied items, for which VENDOR is responsible, BUYER is



unable to use the DELIVERIES in accordance with the CONTRACT, the provisions in sections VI and VII.2 and 3 shall apply with all further claims of BUYER being excluded.

2. For damages that have not occurred at the supplied items themselves, such as loss of production, loss of profit, damages of third parties, downtime costs, loss of use, loss of orders, increased operating, maintenance or personnel costs or indirect costs and/or consequential damage of whatever kind, VENDOR shall, for whatever legal reasons, be liable only

- a. in the event of wilful intent
- b. in the event of gross negligence on the part of executive bodies or executive employees
- c. in the event of culpable injury to life, limb or health
- d. in the event of defects which VENDOR maliciously concealed
- e. within the framework of an assured warranty
- f. in the event of defects in the supplied items to the extent liability exists under the German Product Liability Act for personal injuries or property damage in relation to privately used items

3. In the event of culpable infringement of essential contractual obligations, VENDOR shall also be liable in the case of gross negligence on the part of non-executive employees and in the case of minor negligence, however, in the latter case limited to the typical damage under the CONTRACT that could be reasonably foreseen. Further claims shall be excluded.

VIII. Statute of Limitations

All claims on the part of BUYER, regardless of the legal grounds, shall come under the statute of limitations after 12 months from the commissioning, but maximally 18 months after delivery. For claims for damages according to sections VII. 2 a to d and f, however, the statutory time limits shall apply.

IX. Use of Software

Should software be included in the scope of delivery, BUYER shall be granted a non-exclusive right to use the supplied software including the documentation pertaining thereto. Said software shall be provided for use on the supplied item for which it is intended. Use of the software on a further system shall be prohibited.

BUYER shall only be entitled to copy, revise, translate or convert the software from object code into source code within the legally permissible scope. BUYER undertakes to refrain from removing manufacturer's information - in particular copyright notices - or from modifying them, without VENDOR's prior express consent. All other rights in the software and the documentation, including copies thereof, shall remain with VENDOR and/or the software supplier. The granting of sublicences shall not be permitted.

X. Severability Clause, Applicable Law, Place of Performance and Place of Jurisdiction

1. Should any of the provisions be or become ineffective or impracticable, the other provisions shall remain in full force and effect. The parties hereto undertake to replace the inf-



fective or impracticable provision by an effective provision which gets nearest to the content and economical purpose of the ineffective provision.

2. All legal relationships between VENDOR and BUYER shall be exclusively governed by the laws of the Federal Republic of Germany to the exclusion of the provisions of private international law (IPR) and the UN Convention on Contracts for the International Sale of Goods (CSIG).

3. The place of performance for deliveries and payments (including cheques and bills of exchange) as well as place of jurisdiction for all disputes which may arise between VENDOR and BUYER from the CONTRACT is the place of VENDOR's head office. VENDOR shall also be entitled to bring action against BUYER at BUYER's place of business.
