

# General Terms and Conditions of Joh. Heinr. Bornemann GmbH (hereinafter “Supplier”) for the Delivery of Machines and Spare Parts (hereinafter “Sales Conditions”)

(based on the VDMA - Bedingungen für die Lieferung von Maschinen für Inlandsgeschäfte (General Conditions for the Sale of Machines and Equipment for Domestic Business Transactions of the VDMA (Verband Deutscher Maschinen- und Anlagenbau e.V. – German Engineering Federation)

For use in business transactions with:

1. persons acting, with the conclusion of the contract, in the exercise of a commercial or independent professional occupation (business persons);

2. legal persons of public law or a public law special fund (hereinafter “Customer”).

## I. Conclusion of Contract, General

1. All deliveries of machines and spare parts by the Supplier shall be subject to these Sales Conditions as well as any separate contractual agreements. Contrary general purchase or business conditions of the Customer are objected to by the Supplier; such purchase or business conditions of the Customer shall not become part of the contract even upon acceptance of the order and shall apply only if confirmed in writing by the Supplier.

2. These Sales Conditions shall apply in their respectively current version also to all subsequent business transactions, without such fact having to be expressly stated or agreed upon at the conclusion of such subsequent business transactions.

3. In the absence of separate agreement, a contract shall come into full force and effect only upon written order confirmation by the Supplier. Offers by the Supplier made previously are, in principle, subject to change without notice.

4. All agreements between the Supplier and the Customer regarding the performance of the contract have been made in writing, including within these Sales Conditions. The written contract shall resemble the complete understanding between the parties regarding the contract matter. Oral statements by the Supplier prior to the conclusion of the contract shall not be considered binding and oral understandings between the parties shall be replaced by the written contract between the parties, insofar it is not expressly agreed that they shall continue to be effective.

5. The Supplier shall retain all intellectual property rights and copyright rights to samples, cost estimates, drawings and similar information in physical and non-physical (including electronic) form.

**The parties agree to allow third parties access to information and documents designated by the other party as confidential only with prior approval by the other party.**

6. Agreements on quality, durability and availability of the sales item shall only be considered as guarantee if expressly designated as such.

## II. Prices and Payment Terms

1. Unless otherwise agreed, prices shall be ex works including loading in the works, but not including packaging and unloading. Value added tax in the respective statutory amount shall be invoiced in addition.

2. Unless otherwise agreed, payment is to be made to the bank account of the Supplier either within 14 days of the invoice date with 2 % discount or within 30 days of the invoice date without any discount.

3. Payment shall be deemed to have been made upon receipt by the Supplier; in case of checks only upon encashment. Should the Customer fail to effect payment as per the due date, the outstanding amounts shall accrue interest at 8% p.a. over the respective base lending rate of the European Central Bank; the possibility to claim higher interest and additional damages in cases of default shall remain unaffected.

4. The Customer shall only be entitled to retain payments or to set-off such with counterclaims insofar as its counterclaims are undisputed or have final, res judicata effect.

5. Should it become apparent after conclusion of the contract that the Supplier's claim for the purchase price is threatened due to lacking performance capability of the Customer (e.g. due to an application for the opening of an insolvency proceeding), the Supplier shall be entitled, according to the statutory provisions, to refuse performance and – if applicable, after affixing a deadline – to rescind the contract (§ 321 German Civil Code (*Bürgerliches Gesetzbuch, BGB*). With contracts for the manufacture of non-fungible goods (custom-built products), the rescission may be declared immediately; the statutory regulations regarding the dispensability of the setting of a deadline remain unaffected.

6. Should the Customer not furnish such parts and materials – which according to the contract the Customer is to furnish to Supplier for assembly with the delivery item of the Supplier – at the contractually agreed date, and should it result therefrom that the agreed to assembly of the aggregate unit cannot yet be performed by the Supplier, the Supplier's invoice concerning its delivery item shall become due for payment regardless thereof immediately upon notification by the

Supplier of its readiness for shipment of its delivery item to the Customer.

## III. Delivery Time, Consequences of Delay in Delivery

1. The delivery time shall be subject to the agreements between the parties. It is, however, only binding if agreed in writing between the parties. Compliance thereof by the Supplier shall be contingent upon all commercial and technical questions between the contractual parties having been clarified and the Customer having performed all obligations incumbent upon it such as, e.g. the provision of the necessary certificates or approvals from government agencies, down payments, the opening of a Letter of Credit or the supply of all parts and materials to be furnished by the Customer. If this is not the case, the delivery term shall be extended adequately. This shall not apply insofar as the Supplier is responsible for the delay.

2. Compliance with the delivery time shall be subject to the proviso of correct and timely delivery by the Supplier's own suppliers. Imminent delays shall be notified by the Supplier as soon as possible.

3. The delivery time shall be deemed to be complied with if the delivery item has left the works premises of the Supplier prior to the expiration of the term or the Customer has been notified of the readiness for shipment. Insofar as an acceptance test has to be conducted – except in cases of justified refusals to accept – the date of acceptance shall be determinative and, insofar as the Customer does not participate in the acceptance, the notification of the readiness for acceptance.

4. Should the shipment or acceptance of the delivery item be delayed for reasons attributable to the Customer, the costs accruing as a result of the delay shall be invoiced to the Customer, commencing one month after notification of the shipment or readiness for acceptance.

5. If the non-compliance with the delivery time is attributable to force majeure, labor disputes or other events outside the control of the Supplier, the delivery time shall be extended adequately. The Supplier shall notify the Customer of the commencement and end of such events as soon as possible. Should the named events last more than six months, both parties shall be free to rescind the contract without reciprocal settlement obligations resulting therefrom – except for the repayment of any already made advance payments which, as a consequence of the rescission, are no longer offset by adequate counter-performance.

6. The Customer may rescind the contract without giving notice if the undertaking of the entire performance becomes finally impossible for the Supplier prior to passage of risk. If performance of a part of the delivery becomes impossible and the Customer has a justified interest in the refusal of the partial delivery, it may rescind the contract with regard to the respective part of the delivery. If this is not the case, the Customer shall pay the purchase price attributed to the partial delivery. The same shall apply in the case of the Supplier's incapacity to deliver. Apart from that, Section VII. of these Sales Conditions shall apply. Should the performance of a part of the delivery become impossible, but the performance of the entire contract is essentially dependent thereon, the Customer may in addition rescind the entire contract.

Should the impossibility or incapacity of the Supplier occur while the Customer is in delay of acceptance or if the Customer is solely or predominantly responsible for these circumstances, it shall continue to be obligated to undertake counter-performance.

7. Should the Customer incur damages as a consequence of the Supplier's default, it shall be entitled to a lump sum compensation, equaling 0.5 % of the purchase price for each full week of the delay, but in total not exceeding 5 % of the purchase price for the respective part of the delivery item which cannot be used in a timely manner or in accordance with the contract as a consequence of the delay.

Should the Customer set a reasonable deadline for performance by the Supplier after the due date – taking into account the statutory exemptions – and should such time period pass without performance,

the Customer shall be entitled to rescind the contract within the framework of the statutory provisions. The Customer is obliged to inform the Supplier upon its request within an adequate time period whether it intends to exercise its rescission right. Additional claims due to default are determined exclusively pursuant to Section VII. of these Sales Conditions.

8. If parts and materials to be furnished by the Customer are delivered to the Supplier prior to the contractually agreed date and the Supplier at this time is not able to assemble the furnished parts and materials with the delivery item without detriment to its own normal course of operations, the Supplier shall be considered entitled to store the furnished parts and materials at the risk and on the account of the Customer, namely for an adequate storage fee, until the date contractually agreed date for the furnishing. If the Customer so demands in writing, the furnished parts and materials will in the interim be returned to the Customer at its risk and on its account.

## IV. Transfer of Risk, Acceptance, Testing

1. Subject to deviating written agreements, the risk with regard to the delivered item shall be transferred to the Customer as soon as the delivery item has left the premises of the Supplier or has been handed over to the forwarder, carrier or any other third party designated for the shipment, in particular also in case of partial deliveries or the Supplier having assumed other obligations, e.g. the transport costs or delivery and assembly. Insofar as an acceptance-test has to be conducted, this shall be authoritative for the passage of risk. It must be performed without undue delay on the acceptance date; alternatively, after the notification of the Supplier regarding the readiness for acceptance-testing.

The Supplier shall inform the Customer with notification of the readiness for acceptance in writing about the acceptance date in order to provide the Customer with the possibility to be present or represented at the acceptance date. If the Customer is neither present nor represented at the acceptance date, the Supplier shall prepare an acceptance protocol and send this to the Customer for acknowledgement. The Customer may not refuse acceptance in case of non-material defects.

2. Should shipment or acceptance be delayed or fail to occur as a consequence of circumstances not attributable to the Supplier, the risk shall pass to the Customer as of the date of the notification of the readiness for shipment or acceptance. The Supplier agrees to take out insurance coverage at the cost of the Customer as the Customer requests.

3. Partial deliveries shall be permissible if the partial delivery is useable for the Customer within the framework of the contractual stipulation of purpose, the delivery of the remaining ordered items is assured and the Customer does not accrue any material additional expenditures or additional costs hereby (unless the Customer declared its readiness to assume these costs).

4. Tests shall be undertaken on the basis of the General Test Rules of VDMA for the testing of positive displacement pumps (*Allgemeinen Prüfregeln des VDMA für die Prüfung von Verdrängerpumpen*, VDMA 24 284, Group II).

## V. Retention of Title

1. The Supplier retains ownership title to the delivery item until receipt of all payments from the delivery contract, including possible ancillary services.

2. The Supplier shall be entitled to insure the delivery item at the cost of the Customer against theft, breakage, fire, water and other damages, unless the Customer proves having concluded such insurance itself.

3. The Customer may neither sell nor pledge the delivery item nor assign it as security. In the event of attachments as well as seizures or other dispositions by third parties, it shall notify the Supplier hereof without undue delay.

4. In case of conduct by the Customer contrary to the contractual agreements, in particular default of payment, the Supplier shall be entitled to take back the delivery item after issuing a warning notice and the Customer shall be obligated to surrender it to the Supplier.

5. On the basis of retention of title, the Supplier may only demand the return of the delivery item from the Customer if it has rescinded the contract.

6. As soon as an application for the opening of an insolvency proceeding concerning the assets of the Customer has been filed, the Supplier shall be entitled to rescind the contract and demand immediate return of the delivery item.

## VI. Warranty

For defects in quality and deficiencies in title regarding the delivery item, the Supplier warrants – to the exclusion of additional claims – except as otherwise provided in Section VII. hereof – as follows:

Defects of Quality

1. All those parts which turn out to be defective as a consequence of circumstances existing before the passage of risk are – at the choice of the Supplier – to be repaired or replaced by defect-free parts at no cost to the Customer. The Supplier must be notified of such defects without undue delay in writing. Replaced parts become the property of the Supplier.

2. After consultation with the Supplier, the Customer shall grant the required time and opportunity to undertake all remedies and replacement deliveries considered necessary by the Supplier; otherwise, the Supplier shall be exempted from liability for the consequences resulting therefrom. Only in urgent cases where operational safety is endangered or to avoid disproportionately large damages shall the Customer within the statutory provisions, have the right to remedy the defect itself or to have such remedied by third parties and to demand the reimbursement of the costs necessary therefore from the Supplier. The Customer must inform the Supplier immediately in writing about the estimated costs while at the

same time stating the particular circumstances due to which the right to remedy the defect itself and have such remedied by third parties instead of the Supplier shall derive from. The afore-mentioned clause shall not limit the statutory rights of the Customer in case of failure of subsequent performance measures.

3. Out of the direct costs accruing from the remedy of the defects or the replacement delivery, the costs of the replacement item including shipment shall be borne by the Supplier, insofar as the objection is shown to be justified. In addition, only in cases of remedy of the defects shall the Supplier bear the costs of the disassembly and installation, excluding costs for arranging for any dismantling and reassembly of equipment other than the products delivered by the Supplier to the extent that this is necessary to remedy the defect; such costs shall be borne by the Buyer. If the Customer chooses to remedy the defect, this shall occur at the option of the Supplier either by return shipment of the delivery item with reimbursement of the shipment costs or by undertaking such at the site of use of the delivery item. In any case, the Supplier shall bear the costs of the necessary furnishing of required fitters and assistants including travel costs, insofar as the Supplier should incur hereby no unreasonable burden in comparison to the order value of the objected item.

4. Within the framework of statutory law, the Customer shall have the right to rescind the contract if the Supplier – taking into account the statutory exemptions – allows a reasonable deadline within which to undertake the remedy of the defect to pass without remedying the defect or the remedy or replacement delivery proves unsuccessful. If only an immaterial defect exists, the Customer shall only be entitled to reduce the purchase price. Otherwise the right of reduction of the purchase price shall not exist. Additional claims shall be determined pursuant to Section VII., No. 2 of these Sales Conditions.

5. No warranty shall be assumed for damages caused by

- Unsuitable or improper use of the delivery item by the Customer or third parties,
- Defective assembly or start-up of the delivery item by the Customer or third parties,
- wear and tear of the delivery item,
- Faulty or negligent handling or improper maintenance of the delivery item by the Customer or third parties,
- Use of unsuitable equipment by the Customer or third parties,
- Defective construction work attributable to the Customer or third parties, unsuitable foundation soil or chemical, electro-chemical or electrical influences which affect the use of the delivery item insofar as such damages are not the responsibility of the Supplier.

6. Should the Customer or a third party repair the delivery item improperly, no liability shall be created for the Supplier for damages resulting there from. The same shall apply for alterations to the delivery item without the prior consent of the Supplier, if the remedy of the defect is made impossible or unreasonably more difficult hereby. The Customer shall bear the additional costs of the remedy of the defect accruing as a result of the alteration.

Deficiencies in Title

7. Should the use of the delivery item by the Customer cause an infringement of industrial property rights or copyrights of third parties within the Federal Republic of Germany, the Supplier shall at its cost in all cases either procure for the Customer the right of further use of the delivery item or modify the delivery item in a manner acceptable for the Customer in such a way that the infringement of the industrial property rights no longer exists, but the delivery item continues to fulfil the contractually agreed functions.

Should this not be possible at commercially reasonable terms or within a reasonable time period, the Customer shall be entitled to rescind the contract or to reduce the purchase price adequately. Under these conditions, also the Supplier may rescind the contract.

In addition, the Supplier shall indemnify the Customer against such claims by the respective owners of the protected rights which are undisputed or determined with final, res judicata effect. Any damage claims of the Customer due to infringement of industrial property rights or copyrights of third parties within the Federal Republic of Germany shall be subject to the limitations pursuant to Section VII. of these Sales Conditions. The Supplier shall not be responsible according to this provision if the infringement of the industrial property rights or copyrights of third parties by the delivery item is based on an instruction by the Customer to the Supplier or the infringement was caused by the fact that the Customer unilaterally changed the delivery item or used it in a manner not in accordance with the contract.

8. The Supplier's obligations according to Section VI. 7 shall be final for the infringement of industrial property rights or copyrights, however subject to the provisions of Section VII. They shall exist only if

- the Customer informs the Supplier immediately of any violations asserted in regard to industrial property rights and copyrights,
- the Customer assists the Supplier to a reasonable extent in defending the claims asserted or enables the Supplier to carry out the modifications pursuant to Section VI. 7 hereof,

- the Supplier retains the rights to defend the asserted claims including any out-of-court settlements,
- the deficiency in title is not caused by an instruction by the Customer, and
- the infringement has not been caused by the Customer having arbitrarily altered the delivery item or having used it in a manner not in accordance with the contract.

Regarding parts and materials furnished by the Customer, the Supplier only warrants proper assembly with the delivery item, as far as due to the agreements between the Supplier and the Customer the Supplier shall carry out such assembly; the Supplier does not assume any warranty for parts and materials furnished by the Customer and is neither liable for their conditions nor for their fitness for the intended use.

## VII. Liability

1. The liability of the Supplier for damages, regardless of the legal grounds, in particular, due to impossibility, default, defective or incorrect delivery, breach of contract, breach of obligations with contract negotiations and tort is excluded.

In addition to direct damages to the delivery item this exclusion of liability shall also encompass any consequential, incidental or indirect damages, such as in particular, but not limited to damages for loss of use or loss of production due to defects of the delivery item, lost profits, lost turnover, costs of experts, frustrated expenses (e.g. costs for the disassembly and reassembly caused by a defect of the delivery item), costs for replacements, legal liabilities to pay compensation pursuant to an on-sale of the delivery item.

2. Insofar as the Supplier gives technical information or acts as adviser and such advice or information is not within the scope of the contractual obligations of the Supplier, this shall occur at no charge and under exclusion of any and all liability.

3. In particular the Supplier shall not be liable according to No. 1 of this Section VII. in case of ordinary negligence of its company organs, statutory representatives, employees or other vicarious agents, insofar as such does not concern damages from the culpable breach of a material contractual obligation. In the case of culpable breach of a material contractual obligation, the Supplier shall be liable in the case of gross negligence of non-management employees and with ordinary negligence; in the latter case limited to damage which is typical for this type of contract and reasonably foreseeable.

4. The afore-mentioned limitations of liability of this Section VII. shall not apply to the liability of the Supplier

- insofar as the Supplier maliciously fails to disclose a defect of quality or assumed a guarantee for the quality,
- for claims according to the German Product Liability Act (*Produkthaftungsgesetz*),
- for damages due to culpable injury to life, limb and human health,
- for damages based on wrongful intent, or
- in the event of gross negligence of its company organs or senior executives

Further claims by the Customer against the Supplier are excluded.

## VIII. Statute of Limitations

All claims of the Customer – regardless of the legal grounds – shall become time-barred after 12 months from installation. For damage claims pursuant to Section VII, No. 2.a – e., the statutory statute of limitation periods shall apply. These shall also apply for defects of a structure or for delivery items which were used in accordance with their customary manner of use for a structure and caused its defectiveness.

## IX. Software Use

Insofar as the scope of delivery includes software, the Customer shall be granted a non-exclusive right to use the delivered software including its documentation together with the delivery item determined therefore. A use of the software on more than one system is prohibited.

The Customer may only duplicate, revise, translate the software or convert the software from the object code into the source code in the scope permitted by law (§§ 69 a et seq. German Copyright Act (*Urhebergesetz*, *UrhG*)). The Customer agrees not to remove details of the manufacturer's particulars (especially copyright notices) or to alter them without the prior express consent of the Supplier.

All other rights to the software and the documentation including the copies thereof remain with the Supplier or the software supplier. The grant of sub-licenses shall not be permissible.

## X. Applicable Law, Jurisdiction

1. All disputes between the Customer and the Supplier arising out of or in connection with these Sales Conditions and agreements concluded on the basis thereof shall exclusively be governed by the law of the Federal Republic of Germany, excluding the United Nations Convention on Contracts for the International Sale of Goods dated April 11, 1980 (UN Sales Law, CISG).

2. The place of jurisdiction for all disputes arising out of or in connection with these Sales Conditions shall be – as far as legally permissible – the court responsible at the registered office of the Supplier. The Supplier shall be entitled, however, to file actions at the courts having jurisdiction at the headquarters of the Customer.

3. Place of performance for all deliveries from the contract relationship is D-31638 Obernkirchen, Federal Republic of Germany, insofar as not otherwise agreed.

4. Should a provision of these Sales Conditions be or become invalid, void or unenforceable, the legal validity or the enforceability of all other provisions of these Sales Conditions or other agreements shall not be affected thereby. Invalid, void or unenforceable provisions of these Sales Conditions shall be deemed to be replaced by such valid and enforceable provisions which come as close as possible to the commercial purpose of the cancelled regulation.

Obernkirchen, in June 2009