



JMS AG
Conditions of Sale and Delivery ♦ Dated 12/2010

1. QUOTATIONS

Quotations made by the Supplier are not binding in any respect. Data included in printed matter, quotations and in the order acknowledgement as well as illustrations, descriptions and drawings, measurements and weights are only approximately applicable, unless they have been expressly guaranteed. Cost estimates include only approximate values and are thus not binding.

Illustrations, drawings, sketches and other documents remain the exclusive property of the Supplier. Without the written approval of the Supplier, they may not be copied, reproduced or made available or notified to third parties. Contraventions shall entail the payment of damages. Upon request of the Supplier, all above-mentioned documents must be returned without delay.

Demonstrations and tests carried out on the premises of the prospective Customer by the Supplier's representatives, specialists or installation technicians are at the exclusive expense and risk of the prospective Customer. The Supplier is liable for potential damage only as set forth in clause 7.7.

2. ORDER ACKNOWLEDGEMENT

For the scope of the delivery obligation the written order acknowledgement of the Supplier is decisive. Changes, additions or oral understandings of any kind are only effective, if the Supplier has acknowledged them in writing.

Only the Conditions of Sale and Delivery of the Supplier are binding; the Supplier does not accept any conditions of the Customer, which conflict with his own conditions or deviate from his own conditions, unless the Supplier has expressly approved their binding force in writing. The conditions of the Supplier are also binding, if the Supplier executes delivery to the Customer without reserve, although he is aware of the conflicting and deviating conditions of the Customer.

The supplier in this contract is not obliged to provide delivery should the fulfilment of the contract contravene relevant applicable laws or administrative regulations with regards to import or export control, inclusive of all relevant US sanction laws. This also applies should authoritative clearance, authorisation or permission which is associated either with the export or import of the delivery item required by the supplier, a sub-supplier or an assigned third party appointed by the supplier in order to fulfil the contract either not be issued or be revoked.

The same applies should applicable laws or administrative regulations, in the sense as listed above, be amended and the supplier, a sub-supplier or an assigned third party appointed by the supplier is therefore prevented in carrying out a delivery or that an unacceptable risk of legal and civil liability will result due to carrying out such a delivery. Claims for damages by the Customer or possible contract penalties which were agreed upon, are excluded insofar as the above mentioned obstruction to delivery is not the exclusive responsibility of the supplier.

3. PRICES AND PAYMENTS

The prices are not binding and the calculations are based on the material prices and wages valid on the date of submission of the quotation or acknowledgement of the order. In case of cost increases, in particular due to wage settlements or increases in material prices, occurring after the conclusion of the contract, the Supplier reserves the right to increase the prices accordingly. Upon request, the Supplier will furnish proof of these cost increases. The prices are ex works or ex sales outlet, at the choice of the Supplier, and do not include packaging, freight, postal charges, value insurance or other expenses. The same applies to any partial deliveries or express shipments, which have been agreed.

The prices do not include the respective value added tax. Unless any other agreement was made in writing, packaging (boxes, support planks, screws, packing materials, etc.) is selected by the Supplier with the greatest possible care. Packaging is charged to the Customer. It must be taken back by the Supplier only, if the Supplier has expressly approved this in writing and in

this case only in accordance with the conditions laid down in such a document.

Products that are not listed or those with deviating or intermediate measurements are subject to an additional charge, necessitated by their special manufacture, which must be agreed before the order is placed. If such an agreement is not made or it is not possible to determine the prices exactly, the prices shall be determined upon the basis of the production costs incurred, plus an appropriate charge for profit.

Invoices are normally issued singly; however, if several copies are requested, in not more than triplicate. Any fees, stamp duties and other duties which accrue are invoiced accordingly. The prices are in EURO. Invoices are issued in EURO, as from the date of delivery (dispatch or completion ready for dispatch). Unless otherwise agreed, payment – even for partial deliveries – is to be made by bank remittance, without any deduction, to one of the accounts indicated on the invoice, as follows:

1/3 down-payment upon receipt of the order acknowledgement, 1/3 as soon as the Customer has been informed that the main parts are ready for dispatch, the remainder within one further month, so that the Supplier may have the equivalent of the invoice at his disposal, without any loss, on the due date.

If, contrary to clause 3, section 5, payment is made in foreign currency, the proceeds will be credited after expenses have been deducted.

Payment is not considered effected until the Supplier has received the full invoice amount for his free disposal.

Payment orders, cheques and bills of exchange are only accepted after special agreement and only as payment, not in lieu of performance, whereby any collection expenses will be charged; further negotiation or prolongation do not count as performance either. Discount charges are debited to the Customer. The Supplier does not accept any liability for prompt presentation, protest, notification and return in case a bill is not honoured.

If the payment terms are exceeded, default interest is charged at a rate of 8 % above the basic interest rate published as effective by the Federal Bank of Germany, without a notice of default being required.

Withholding of payments, unless they are based on the same contractual relationship, is not allowed; the same applies to offsetting of counter-claims by the Customer, unless they are undisputed or have been legally determined. The Supplier is authorized to use incoming payments, even if instructed to the contrary, to settle other items of his credit vis-à-vis the Customer.

If the Customer does not meet his payment or insurance obligations or those arising from the Supplier's title provisions, if he ceases to make payments, or if insolvency proceedings are instituted against him, the Supplier shall have the right to withdraw from the contract. All costs arising from such a withdrawal are to be paid by the Customer. In this case the Customer has to return the delivered item immediately.

4. DELIVERY TIME

For the observance of the delivery date or the delivery time, the timely notification of the readiness for dispatch is decisive. Should, contrary to clause 3, not a delivery ex works, but an assembly on site have been agreed upon, the decisive date for the promptness of the delivery is the point in time when the item to be delivered was made available for transportation through the forwarding agent or when the Supplier notified the Customer of the readiness for dispatch, unless any other agreement was made. The delivery time is calculated from the date of acknowledgement of the order to dispatch from the factory or, if the Supplier chooses, from his sales outlet; adherence to the delivery time is subject to fulfilment of his contractual obligations by the Customer, in particular the receipt of all documents to be delivered by the Customer in perfect condition and their release.

The delivery time is extended by an appropriate period of time and the Customer is not entitled to claim compensation in the case of measures that are due to labour disputes, in particular strike and lock-out, as well as in the case of unforeseen difficulties for which the Supplier cannot be held responsible, to the extent these difficulties can be proven to have a substantial effect on the completion or



delivery of the item to be delivered. Nor are the circumstances described above the responsibility of the Supplier if they occur during a delay in delivery which is already in effect. It is of no consequence whether the unforeseen difficulties occur at the Supplier's factory or at his sub-contractors or other suppliers. In the case of such difficulties, the delivery time is extended accordingly. The same applies if the agreed payment conditions are not observed promptly, or if other authorizations from third parties, which are required for the execution of deliveries, are not received in time. If delivery can be proven to be delayed through the fault of the Supplier, the Customer is entitled to claim compensation for the delay, which must not exceed the actual damage, which must be proved; unless the delay in delivery is caused either by intent or gross negligence of the Supplier or his executives, the compensation shall amount to a maximum of ½% of the price of the delayed delivery for each full week of the delay; in no case, however, more than 5% of the agreed total order value may accumulate. No compensation can be claimed for the duration of events in the sense of section 2, even if such events occur only after the due delivery date.

5. RETENTION OF TITLE

The goods remain the property of the Supplier until full payment of the purchase price, including supplementary receivables and redemption of any bills of exchange, surrendered in payment. If an acknowledgement of balance is issued, the retained title shall be used as security for the debt arising from the balance. Retention of title continues to be applicable as long as the Supplier has claims against the Customer, either from current business connections or in connection with the delivered item, in particular for repair work, deliveries of spare parts or accessories. If the Customer is in arrears with his payments for more than 10 business days, the Buyer is obliged to return the delivered items at the Seller's request; in this case the Seller must not withdraw from the contract before requesting such a return.

The Customer is only permitted to resell the goods delivered under retention of title with the approval of the Supplier. He hereby assigns to the Supplier all receivables accruing to him from the purchaser(s) as a result of the resale. In order to collect these receivables, the Customer is authorized to collect the debt himself, notwithstanding the authorization of the Supplier. However, the Supplier will not disclose this assignment provided the Customer fulfils his obligations and the conditions for the debt becoming due immediately, according to clause 3 of the Conditions of Delivery and Payment, do not come into force.

The Supplier can demand that the Customer informs him of the receivables which he has assigned to him and their debtors and gives him all the information necessary to make collection, hands over the relevant papers and informs the debtor of the assignment. The Customer is obliged to keep the delivered item in proper condition for the duration of the retention of title, to have any necessary repair work carried out and to insure it against fire, water, break-in, theft and machine break-down, on the understanding that the Supplier is entitled to any rights arising from the insurance.

If the supplied goods are combined with another item in such a way that they become an integral part of the item which is considered the main item, the Customer hereby assigns to the Supplier a proportionate share in the ownership of the main item, which the Customer takes into custody for the Supplier. In the case of resale, the provisions of the preceding paragraphs apply accordingly.

6. SHIPMENT

Shipment is made at the risk of the Customer. This also applies if a carriage-paid delivery has been agreed.

If shipment is delayed through the fault of the Customer, risk is transferred to the Customer from the date the goods are ready for shipment.

Any goods which are lost or damaged during transport are only replaced by the Supplier on the basis of a new order, at the prices valid at the time, unless it was agreed in the contract that the Supplier assumes the transportation risk.

The Customer must notify the Supplier in writing of any discrepancies compared with the order, the dispatch note or the invoice,

immediately upon receipt of the goods. Otherwise the delivery is regarded as accepted.

Unless otherwise agreed, the Supplier may choose the shipment route at his own discretion. The Supplier assumes no responsibility for shipping at the best price rates. Transport insurance is only arranged at the express wish of the Customer and at his expense.

7. LIABILITY FOR DEFECTS

The Supplier is liable as follows for any defects in the delivery, to the exclusion of any other claims:

1. The Supplier assumes responsibility for any defects in the delivered item and in workmanship for a period of 12 months, 6 months in the case of multiple shift operation (warranty period).

For defects in the goods purchased, the rights of the Customer are limited at the Supplier's choice to subsequent performance through removal of the defect or replacement of the returned parts by parts that are free from defects.

If the Supplier rejects the subsequent performance definitely or if the subsequent performance fails, the Customer can claim at his choice an abatement of the purchase price or withdrawal from the contract.

The Supplier may request that the delivered item or the part that is claimed to be defective is returned to the Supplier's factory. Should the delivered item be defective, the Supplier will pay the necessary transport, travelling, work and material costs to a reasonable extent. Additional expenses that incur due to the fact that the item was brought to another place than the location, to which the delivery was made, will not be paid, unless the Supplier knew that this was in compliance with the intended usage. The Supplier may choose to have the defect removed by his own personnel or by a company hired by him. Any costs for repair work carried out by third parties that were engaged by the Buyer without the express approval of the Seller, will not be replaced.

Replaced parts become the property of the Supplier. The Customer must grant the Supplier adequate time and opportunity to carry out any modifications considered necessary by the Supplier and to deliver replacement machines or parts.

2. If an acceptance test of the delivered items is not expressly agreed upon in the contract, the Customer has to examine incoming items immediately and to notify the Supplier of apparent defects. If defects become apparent at a later date within the warranty period in the sense of clause 7.1, the Customer also has to notify this immediately in writing. If the Customer does not fulfil this obligation, he will forfeit his rights arising from the defect.

3. The warranty period for the replacement part and the repair is 3 months; however, it runs at least until expiration of the original warranty period in the sense of clause 7.1 for the delivered item.

4. In the case of unjustified notifications of defects, which necessitate extensive investigations, the costs of the checks can be charged to the Customer.

5. The warranty claims will expire, if the delivered item has been changed by the Customer or by third parties or by the installation of parts of other origin or if the Customer does not observe the factory's provisions concerning handling of the delivered item (operating instructions) and, in particular, does not carry out or have carried out the prescribed checks and maintenance, unless the Customer furnishes proof that the damage is not due to this.

The same applies if there is a damage that is due to insufficient information being given at the time the order was placed.

6. The Customer has the option of carrying out an acceptance test of the ordered parts at the Supplier's factory, in order to avoid complaints at a later date.

7. The liability of the Supplier exclusively follows the stipulations set forth in the above clauses. All rights that are not expressly guaranteed in these clauses, e.g. the right to replacement of damage of any kind also including damage that has not occurred to the delivered item itself and on whatever legal basis, are excluded.

This exclusion of liability does not apply in the case of wilful acts and gross negligence of legal representatives or vicarious agents and in the case of a culpable violation of cardinal obligations. Neither does the exclusion of liability apply, if characteristics that have been expressly assured are missing, provided the aim of this assurance was to protect the Buyer against any damage that has not



occurred to the delivered item itself, or the damage is based on a circumstance for which the Supplier has given a warranty. The same applies if a procurement risk which was expressly assumed by the Supplier materializes. Finally, the exclusion of liability does not apply in those cases where a liability for damages exists according to the applicable national law of the respective country, in particular for product liability, and cannot be excluded by contract. Furthermore the exclusion of liability does not apply for any damage to life, body and health. Except for damage to life, body and health and for wilful acts and gross negligence of legal representatives and vicarious agents, the scope of the damage to be compensated is limited to foreseeable damage.

8. THIRD PARTY PATENT RIGHTS

The Supplier has checked the legal position with respect to patents concerning the items to be delivered. He has not discovered any third party patent rights which are violated by the delivered items. However, no guarantee can be given in this respect. If it should occur that third party patent rights are in fact violated, the Supplier's liability is limited to the actual net invoice price of the delivered items. No liability is accepted for consequential damages.

Liability also ceases to apply if the delivered items are only an indirect cause of a violation of patent rights.

If the delivery is based on information and samples provided by the Customer, the Supplier is not obliged to check the legal position with respect to patents. Should any third party patent rights be violated due to a delivery executed on the basis of information and samples provided by the Customer, the Customer shall exempt the Supplier from any obligations arising from this, including the costs of legal proceedings.

9. DELIVERY AND INSTALLATION

1. Used machines are sold and delivered without any liability for defects. Thorough inspection before purchase is strongly recommended, since subsequent complaints will not be recognized.

2. Unless otherwise agreed in the contract, the costs of installation and putting into operation of delivered items are charged to the Customer.

These costs include the travelling and waiting times of the respective personnel, the costs of a return journey, accommodation as well as the daily trips to and from the site of installation or putting into operation as well as all materials, tools, rental equipment, etc. that are required to carry out the work.

3. To the extent the Supplier has to store tools or other materials required for installation and putting into operation on the premises of the Customer, the Customer is fully liable for these tools and materials.

4. During installation or putting into operation the Supplier is only liable for damage caused by intent or gross negligence of the Supplier's personnel. Notwithstanding the cause of the damage, the Supplier's liability is limited to the purchase price of the delivered item. Consequential damages (such as loss of production, lost profit) are excluded as a matter of principle.

5. Provided the Supplier has informed the Customer before, the Customer has to put at the Supplier's disposal in time and free of charge any devices, lifting equipment, erecting tackle, fork-lift trucks, cranes, etc. required for installation and putting into operation. The Customer must ensure that personnel that is authorized to operate the equipment (fork-lift trucks, cranes, etc.) is available during the time of installation and putting into operation. Such personnel must be available on request as long as the Supplier's personnel is working. The Supplier is not liable for any damage that is caused by faulty devices, lifting equipment, erecting tackle, fork-lift trucks, cranes or by the personnel of the Customer.

6. If the Customer does not fulfil his contractual obligation of cooperation during installation and putting into operation, or if he fulfils this obligation only insufficiently, the Customer has to bear all costs arising from delays.

10. WITHDRAWAL BY THE SUPPLIER

The Supplier is entitled to withdraw from the contract if the Customer does not create the prerequisites for delivery and installation (clause 9), although he was requested to do so in writing. The same

applies if the Customer does not accept the delivery for other reasons that are within his control, although he was requested to do so previously and in writing. In case a cause for withdrawal exists, the Supplier is entitled to withdraw from the contract at 2 weeks' notice. In this case the Customer has to pay the agreed sales price, from which he can deduct all expenses that can be proven to be saved by the Supplier.

In the event of unforeseen circumstances, such as cases of force majeure, the parties agree to adapt the delivery times and the delivery conditions. Should a case of force majeure last longer than three months, the Supplier is entitled to declare his withdrawal from the contract. In this case the Customer is obliged to refund the Supplier for the services that were actually rendered, exclusive of any mark-up for profit.

11. VENUE

The place of performance and exclusive venue for deliveries and payments, as well as for any disputes arising directly or indirectly from the contractual relationship, is the Amtsgericht (Local Court) or Landgericht (District Court) having jurisdiction over Lahr, Germany unless otherwise agreed in the contract.

12. APPLICABLE LAW

Unless otherwise agreed in the contract, the contract is subject to the substantive German law. An application of the UN Convention on the International Sale of Goods is excluded.

13. BINDING FORCE OF THE CONTRACT

The contract remains binding even if individual points of its conditions become ineffective.

The Customer is not allowed to transfer his contractual rights to third parties without the express agreement of the Supplier.

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