



Last revised March 2012

General Terms and Conditions of Sale, Delivery and Assembly

Section 1 General Provisions

- (1) Any and all business transactions with our customers (also referred to hereafter as the "Purchaser") shall be subject exclusively to these General Terms and Conditions. None of the Purchaser's deviating terms and conditions shall be accepted, and such terms and conditions shall not become part of the contract even if confirmed without any proviso or if the order is executed. Such terms and conditions, as well as any other deviating agreement, require confirmation by us, Josef Emmerich Pumpenfabrik GmbH, Hönningen-Liers.
- (2) The entire agreements entered into between us and the Purchaser for the purpose of the execution of the contract shall be set out in writing in the contract concluded with the Purchaser, and in these General Terms and Conditions.
- (3) Any and all declarations and messages relevant to the conclusion and execution of the contract, such as, especially, offers, confirmations of orders or invoices, may either be made in writing, or may be generated, sent and exchanged by way of electronic communication. Oral declarations shall only be deemed effective to the extent that they are confirmed in either of these forms. For purposes of receiving information, declarations and enquiries pertaining to the execution of the contract, each of the Parties shall designate one or several contact persons, and shall communicate the name(s) and contact details of same to the respective other Party. Should one Party not designate any contact person, the person who has concluded the contract on behalf of that Party shall be deemed the contact person. Documents established electronically or digitally shall be deemed equivalent to documents in writing.
- (4) These conditions shall only apply vis-à-vis entrepreneurs for the purposes of sec. 310 para. 1 and sec. 14 of the German Civil Code (Bürgerliches Gesetzbuch - BGB -).

Section 2 Conclusion and Object of the Contract

- (1) Any order submitted by the Purchaser shall be deemed a binding offer for the purposes of sec. 145 BGB, and may be accepted by us within 3 weeks. The contract shall only be concluded upon our confirmation of the order. The object of the contract shall be exclusively determined by our order confirmation. If, in the absence of any order confirmation, the contract is concluded through execution of the order, the object of the contract shall be defined by the contents of the order; this shall not apply to the remaining terms and conditions of the contract conditions to which sec. 1 para. 1 above shall apply.
- (2) We reserve and retain any and all rights of property, copyrights and rights of use in respect of samples, cost calculations, drawings and other information provided in corporeal, incorporeal or electronic form. Such items may not be made available to third parties, and must be returned to us immediately on request. We undertake not to make available to any third party any information and documents expressly designated as confidential without the consent of the Purchaser.

- (3) The dimensions, weights, performance specifications as well as the figures and drawings provided in or with our quotation documents or order confirmation shall only be deemed binding if expressly confirmed by us in writing. Any gross weights and box dimensions are to be considered as approximations determined to the best of our knowledge without, however, being binding.
- (4) We shall provide any information concerning protective equipment to the extent that agreement has been made to this effect.

Section 3 Prices and Conditions of Payment

- (1) Unless expressly agreed, any and all prices shall apply ex works including costs of loading at the works, but excluding the costs of packaging and unloading, plus value-added tax as applicable by law on the day of invoicing.
- (2) To the extent that circumstances beyond our responsibility, e.g., additional requirements made by the Purchaser, amendments of regulations, an increase in quantities or services turns out to be necessary, we reserve the right to adjust our prices accordingly. We shall inform the Purchaser without undue delay of the necessity and extent of any such price adjustments as soon as these become known.
- (3) We also reserve the right to adequately adjust our prices accordingly if, after conclusion of the contract, our incurrent costs should increase or decrease, particularly where such increase or decrease occurs as a consequence of tariff agreements or changes in the costs of materials. We shall provide evidence thereof to the Purchaser upon his request.
- (4) Unless otherwise agreed, the the purchase price and/orremuneration shall become due (net and without any deductions) as follows:
 - for services (e.g., assembly/service/maintenance), 30 days from the invoice date;
 - for pumps and spare parts of a net order value of < 10,000 EUR, 30 days from the invoice date;
 - for pumps and spare parts of a a net value of > 10,000 EUR,
1/3 as advance payment 7 days from the date of the order confirmation,
1/3 as partial payment upon the expiry of half the term of delivery
as specified in the order confirmation, and the remaining payment
30 days after delivery, or notification of readiness for shipment, and invoicing.
- (5) The Purchaser shall be entitled to set off any counterclaims against our claims only to the extent that such counterclaims have been acknowledged by us, are undisputed or confirmed by a non-appealable judicial instrument. Furthermore, the Purchaser shall only have a right of retention to the extent that the counterclaim is based on the same contractual relationship.
- (6) We shall accept bills of exchange and cheques for performance; the Purchaser shall bear all ensuing costs for discounting and collection.
- (7) If the Purchaser is in default of payment, we shall be entitled to collect default interest in the amount of 8 percentage points above the base interest rate as applicable from time to time (sec. 247 BGB), as well as flat late payment fines (first notice € 2.50; second notice € 5.80; third notice € 7.40) This shall neither affect our right to claim higher damages nor the Purchaser's to show that the actual damages are lower.

Section 4 Packaging and Shipping

If the Purchaser requests shipment of the purchased goods, the costs for packaging and shipping will be invoiced separately. In any such case, shipment shall be at the receiver's risk. Unless agreed otherwise, we shall determine the method of shipping and packaging using due commercial diligence without, however, assuming responsibility for identifying the least costly method of forwarding. This also applies if delivery "free at destination" has been agreed upon.

Section 5 Retention of Title

- (1) We reserve title to the delivered products until complete fulfilment of all claims resulting from our business relationship with the Purchaser and any such claims yet to accrue. To the extent that we have agreed payments to be processed by way of cheques or bills of exchange, retention of title shall also extend to the redemption, by the Purchaser, of a bill of exchange accepted by us,, and shall not lapse by the crediting to us of the cheque we have received. In any case of the Purchaser's infringement of the contract, in particular with respect to default of payment, we shall be entitled to repossess the purchased goods upon expiry of an notice period. Our repossession of the reserved goods shall also represent our withdrawal from the contract. Following any repossession, we shall be entitled to liquidate the goods; any proceeds from such liquidation, minus adequate costs of liquidation, shall be set off against the amount due by the Purchaser.
- (2) If the reserved goods are to be processed by the Purchaser, such processing shall be deemed to have been made on our behalf. We shall then be deemed manufacturer for the purposes of sec. 950 BGB, and shall acquire co-ownership of any intermediate or final products by proportion to the value of our reserved goods (including VAT) relative to the value of the other goods to be processed at the time of processing. If the reserved goods are amalgamated with other goods not belonging to us, we shall acquire co-ownership by proportion of the value of our reserved goods (including VAT) to the value of the other goods at the time that amalgamation occurs. If the goods are amalgamated in such a way that the Purchaser's goods are to be considered as the main component, the Purchaser already now transfers to us the proportional co-ownership in the new product that has resulted from the amalgamation. Should the reserved goods be integrated by the Purchaser into any third party's real property, , the Purchaser already now transfers to us any rights of remuneration against such third party in the amount of our claims against the Purchaser.
- (3) The Purchaser shall only be entitled to dispose of the goods in the course of ordinary business; no other disposal, such as pledging or assignments of security, shall be permitted. The Purchaser hereby already now assigns to us any and all claims against his customers arising from any subsequent sale or processing. In cases of damages or loss of the goods delivered by us, the Purchaser hereby already now assigns to us any and all claims against insurance companies or any other third parties in the amount of our claims against the Purchaser. If any goods are co-owned by ourselves and other third parties, the Purchaser shall cede to us all claims out of any subsequent sales by proportion of our share of co-ownership.
- (4) The Purchaser is authorised to collect claims assigned to us. We shall refrain from collecting such claims, it being provided that the Purchaser fulfils all agreed payment obligations, is not in default of payment, that no application to open insolvency proceedings over the Purchaser's assets has been filed, and no general suspension of payment is in place.. Should any of this occur, the Purchaser shall inform us about the assigned claims, the names of the debtors thereof and to provide to us any and all data required for collection, hand over the relevant documents and notify the debtor about the assignment.

- (5) In the event that the value of claims assigned to us and/or goods to which we have title before or after their processing by the Purchaser, should exceed our own claims against the Purchaser by more than 10%, we shall, upon the Purchaser's request, release those claims or goods at our own full discretion until the excess is below 10%.
- (6) The Purchaser shall notify us without undue delay of any third party's seizure of any reserved goods delivered, and of the rights assigned to us. To the extent that such third party is unable to reimburse us for the judicial and extrajudicial costs of third party action under sec. 771 of the German Civil Procedures Code (Zivilprozessordnung - ZPO) - , the Purchaser shall be liable accordingly.
- (7) The Purchaser is obliged to carefully store the reserved goods and to sufficiently insure them against theft and fire at his own expense.
- (8) Upon complete fulfilment of all claims arising from the order and any previous orders, the Purchaser shall acquire title to the reserved goods, and shall be free to dispose again of any claims ceded to us.

Section 6 Delivery Term, Delay in Delivery

- (1) Our keeping of the deadline for delivery period (which must be expressly agreed upon) requires that all commercial and technical issues between the parties have been clarified and that the Purchaser fulfils all of his duties, such as obtaining the required official certificates and/or licenses, or making down payments. To the extent that this is not the case, the delivery period shall be adequately extended.
- (2) Our keeping of the deadline for delivery is subject to our receiving ourselves correct and timely delivery of our own supplies. Any delays becoming apparent shall be communicated as soon as possible.
- (3) The deadline for delivery shall be considered as met if the purchased goods have left our works until the expiry of such deadline, or if we have informed the Purchaser that the order is ready for shipment. If any formal take-over is required, the date of take-over, or, alternatively, our notification of readiness for hand-over, shall be relevant, except in the event that the Purchaser is entitled to refuse such take-over acceptance is justifiably refused.
- (4) If the delivery and/or acceptance of the purchased goods is delayed for reasons within the Purchaser's responsibility, we shall be entitled compensation for any damages and additional expenditure resulting from such delay.
- (5) To the extent that the underlying purchase agreement is a fixed term transaction for the purposes of sec. 286 para. 2 no. 1 BGB or sec. 376 of the German Commercial Code (Handelsgesetzbuch - HGB -), we shall be liable as provided by statutory law. We shall also be liable as provided by statutory law if the Purchaser is entitled to claim that his interest in continued fulfilment of the contract is frustrated as a result of a delay in delivery for which we are responsible.
- (6) If the Purchaser suffers damages as a result of a delayed delivery of our part, the Purchaser shall be entitled to demand a flat-rate compensation for the default. This compensation amounts to 0.5% per full week of delay, however not to exceed an aggregate 5% of the value of such part of the delivery as cannot be used in time or as provided in the contract because of the delay. We reserve the right to provide evidence of lower damages resulting from the delay.

Section 7 Passing of the Risk, Take-Over

- (1) The risk of accidental loss or accidental degradation of the purchased goods shall pass to the Purchaser as soon as the goods have left our premises. This also applies in cases of partial delivery or where we have also provided other performances such as, e.g., the assumption of shipping charges or delivery and installation. To the extent that a formal take-over is required, the passing of the risk shall be determined by the agreed take-over date. The Purchaser is not entitled to refuse take-over of the purchased goods for non-essential defects.
- (2) In the event that delivery or take-over is delayed or becomes impossible due to circumstances beyond our responsibility, the risk shall pass to the Purchaser on the date of delivery and/or readiness for take-over. In this case, we shall be obliged to take out any insurance coverage as demanded by the Purchaser at the Purchaser's expenses.
- (3) We shall be entitled to provide partial deliveries, unless such partial delivery should not be reasonably acceptable to the Purchaser.

Section 8 Claims for Defects

- (1) The Purchaser's rights in respect of any defects of the purchased goods shall become time-barred one year after our notification, to the Purchaser, of readiness for shipment, however no later than one year from the delivery of the purchased goods; in all other cases, the statutory limitation periods shall apply.
- (2) Any claims based on defects of the purchased goods shall, for the rest, be subject to the following provisions:
 - (a) Any of the the Purchaser's rights in respect of defects presuppose that the Purchaser has duly fulfilled all of his obligations of inspection and notification of defects (sec. 377 HGB). Obvious defects must be claimed without delay, however no later than within 2 weeks of delivery of the purchased goods. Failure to comply with this term shall exclude any and all claims based on an obvious defect. The Purchaser is obliged to notify us without undue delay of any defects which, despite careful inspection of the purchased goods, could not have been detected within said deadline.
 - (b) For delivered components that, due to their specific material properties or types of application, are subject to premature wear, such as manometers, packing cases, membranes, sleeves, ball valves, valve seats, cone valves, seals, V-belts, springs etc., any and all claims for defects of the purchased goods are excluded. Furthermore, our liability for defects does not encompass claims made for natural wear or damages that occurred, without any negligence of our part, as a result of faulty assembly, faulty or negligent treatment, excessive loading, inappropriate operating materials, faulty construction work, inappropriate foundation, solid, gaseous or loose substances in the pumped liquids, scale deposits within pumps and pipelines, idling for lack of pumping liquid and chemical, electrochemical or electrical effects.
 - (c) We shall only fulfil claims for defects of the purchased goods if the Purchaser has fulfilled his obligations for no less than the value which the purchased goods retain, account taken of the defects.
 - (d) If the purchased goods are found to be defective, we shall, at our own full discretion, either eliminate the defect or replace the goods with goods free of defects. We shall bear all costs associated with fulfilling the claim, especially costs of transportation,

travel, work and materials, however limited to a maximum of the total purchase price. If the purchased goods have been moved to another place than the place of performance, the Purchaser is obliged to cover any additional costs so incurred.

- (e) The Purchaser is obliged to provide us with sufficient time and opportunity to fulfil the claim for defects; otherwise, we shall be released from any liability for any ensuing consequences. Only in urgent cases of hazards to operational safety and/ where disproportionately larger damage must be prevented shall the Purchaser be entitled to rectify the defect himself or through a third party, and to claim compensation of the expenses necessary to this end, it being understood that we must be notified without delay.. In cases where defects are inappropriately rectified by the Purchaser or by a third party, we shall not be liable for any consequences of such acts. We shall also not be liable for the consequences of changes made to the delivered goods by the Purchaser without having previously obtained our express consent.
 - (f) If the deadline for fulfilment of the defects claim (elimination of defect or delivery of defect-free replacement) as fixed by the Purchaser should expire to no avail, the Purchaser shall be entitled to withdraw from the contract or demand a reduction of the purchase price.
 - (g) If the claim cannot be fulfilled successfully, the Purchaser is entitled to claim damages in lieu of performance, or to demand reimbursement of frustrated expenses. Also in this case shall we only be liable in the event of wilful action and gross negligence, including wilful action and gross negligence of our representatives or agents, as well as in cases of culpable infringement of an essential contractual obligation. If we have not culpably infringed an essential contractual obligation, our liability for damages shall be limited to such damages as would predictably and typically have occurred.
- (3) For the rest, we shall be liable in accordance with the provisions of statutory law for any culpable damage to the life, body and health in the event of wilful action, gross negligence and malicious action. Mandatory liability for bodily injury and property damage under the German Product Liability Act shall, however, remain unaffected. In cases of our culpable infringement of essential contractual obligations, we shall be liable under the provisions of statutory law, such liability, however, being limited to such damages as would predictably and typically have occurred. Any and all further claims, especially those for consequential damages, shall be excluded.
- (4) To the extent that no deviating provisions have been made above, any and all liability claims are excluded, irrespective of their legal nature. This particularly applies to claims for damages based on *culpa in contrahendo*, other breaches of obligations, or claims of tort in accordance with sec. 823 BGB. The above exclusions of liability shall also apply to any personal liability of our employees, workers, representatives and agents.

Section 9 Place of Performance and Jurisdiction

- (1) To the extent that no other agreement has been made, the place of performance for deliveries and payments shall be Hönningen-Liers, Germany. Any dispute arising out of, or in connection with, the contract shall be brought in the German state courts at our business seat, if the Purchaser is a general merchant, a corporate body under public law or a separate estate under public law. We shall, at our full discretion, be entitled to also bring court action in the forum at the Purchaser's business seat.
- (2) The contractual relationship and any disputes arising therefrom – also in international transactions – shall be governed by the substantive law the laws of the Federal Republic of Germany.

- (3) The ineffectiveness or inapplicability of one or more provisions of these General Terms and Conditions shall not result in the ineffectiveness or inapplicability of the remaining provisions.