

A. General provisions

I. Scope of the terms and conditions

1. We, Hammelmann GmbH, shall solely conclude contracts in accordance with our following General Terms of Business. They shall apply to all – also to future – deliveries, assemblies and other services, even if they are not expressly agreed again. Any provisions that deviate from the content of these terms and conditions shall require our written confirmation. Terms of business of the Purchaser that we do not acknowledge in writing, shall be non-binding for us. No express contradiction shall be required.
2. Individual agreements with the Purchaser – if made in writing – shall take precedence over the terms and conditions. The legally relevant declarations and notifications which the Purchaser must submit to us after the conclusion of the contract (e.g. deadlines, defect notifications) must also be made in writing. The written form shall be preserved by the text form.

II. Quotations, scope of the delivery/service

1. Our quotations shall be non-binding.
2. The documentation related to our quotations such as illustrations, drawings, weight and measurement details shall only apply as approximations unless we expressly designate them as binding. We shall also reserve title and copyright rights to cost estimates, drawings and other documentation as well as to data, regardless of their form of expression. These documents may not be disclosed to third-parties without our consent.
3. Our order confirmation shall apply as the sole deciding factor for the scope of the delivery and/or assembly. Partial deliveries and partial services shall be admissible if this is reasonable for the Purchaser.
4. The Purchaser may only assign claims against us with our consent. This shall not apply to payment claims of the Purchaser against us.

III. Prices and payment terms

1. Prices shall be net prices plus value added tax. Prices for deliveries shall apply unless otherwise agreed ex works without packaging and for deliveries abroad or to a foreign subsidiary of the Purchaser we shall deliver ex-works (EXW) Incoterms 2020.
2. Price adjustments shall be permitted if the delivery/service is delivered more than four months after the conclusion of the contract and we provide evidence of the relevant cost increases.
3. The assertion of offsetting or retention rights of the Purchaser shall only be permitted with undisputed or legally determined receivables.

IV. Delivery period/service period

1. The deadlines agreed with the Purchaser in the order confirmation or elsewhere shall apply. Adherence to this deadline shall also assume the prompt receipt of all documentation to be delivered by the Purchaser as well as compliance with the agreed payment terms and other obligations. If these pre-conditions are not promptly fulfilled, then the deadline shall be extended for the period of the delay.
2. For deliveries, the deadline shall be deemed as adhered to when the operationally ready shipment is despatched or collected within this deadline. If the delivery is delayed for reasons for which the Purchaser is responsible, the deadline shall apply as having been adhered to with the notification of the readiness to ship within the agreed period. If the shipment-ready goods are not called off for reasons for which the Purchaser is responsible, we shall be entitled to charge a storage fee of 1% of the net invoice amount for each commenced month, but at a maximum of 5% of the net value of the goods. The assertion of a higher cost amount shall remain reserved. The agreed assembly deadlines shall be extended by any downtime or waiting time for which we are not responsible.
3. Should we be impaired in the fulfilment of our obligations due to the occurrence of unforeseeable, extraordinary circumstances that we could not prevent despite reasonable diligence, irrespective of whether they occurred in our plant or in the plant of our sub-supplier – e.g. operational disruptions, official interventions, delays in the delivery to us of essential raw materials and building materials, energy supply difficulties, pandemic situations – then if the delivery or service becomes impossible due to this, the deadline shall be extended for the period of the impairment. If the aforementioned circumstances make it impossible for us to fulfil our obligations, we shall be relieved from our obligation.
4. The deadline for the delivery or service shall also be extended by an appropriate period in the event of a strike or lockout. Here also we shall also be relieved from our obligation to fulfil the contract if the delivery or service becomes impossible.
5. If the delivery time or the time of the services provision is extended in the above cases for an unreasonably long period, the Purchaser shall be entitled to withdraw from the Contract. The assertion of compensation claims shall be excluded.
6. If the aforementioned circumstances should occur at the Purchaser, then the same legal consequences shall also apply to its acceptance obligation.
7. Both contractual parties shall be under the obligation to notify the other party immediately of any performance disruptions.

V. Liability limitations, compensation

1. The following limitations shall apply to our contractual and extra-contractual (tortious) liability as well as to liability due to fault in the conclusion of the contract. The burden of proof for the limitation or liability or facts justifying an exclusion of liability shall lie with us.
2. We shall not be liable for slightly negligent breaches of non-material contractual obligations.

In the event of a slightly negligent breach of material contractual obligations, compensation claims shall be limited to typical and foreseeable contractual damage. In the event of a grossly negligent breach of non-material contractual obligations, we shall be liable for typical and foreseeable contractual damage.

Material contractual obligations shall include those where their fulfilment is a pre-requisite to the due and proper performance of the contract and on compliance of which the Purchaser may rely.

3. A limitation of liability shall not apply to the extent that we are liable for injury to life, limb or health.
4. Any claims of the Purchaser under the Product Liability Act shall not be affected by the aforementioned liability limitations.

VI. Place of performance, court of jurisdiction, applicable law

1. The place of performance for all obligations arising from the contractual relationship shall be Oelde.
2. The court of jurisdiction for all disputes arising from the contractual relationship, provided the customer is a businessman, a legal entity under public law or a special fund under public law, shall be Oelde. However, we shall be free to invoke the court of competent jurisdiction for the head office of the Purchaser.
3. German law shall apply exclusively. The application of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (UN Convention) shall be excluded.

VII. Data privacy

The data privacy notices on our website www.hammelmann.com/en/data-protection/ shall apply

B. Specific provisions for deliveries

I. Shipment and transfer of risk

1. Risk shall be transferred to the Purchaser with the shipment. Should the shipment be delayed for reasons that fall into the sphere of influence of the Purchaser or its auxiliary persons, the risk shall then be transferred to the Purchaser on the notification date of the readiness to ship. The place of supply shall be Oelde.
2. We shall not be under the obligation to insure the goods against transportation damages. Insurance shall only be concluded on the written request of the Purchaser and upon receipt of advance payment.

II. Retention of title

1. We shall retain title on the delivered goods until receipt of the full payment of the agreed price, including all receivables from the business relationship and future receivables and until the redemption of bills of exchange and cheques.
2. The Purchaser shall be entitled to perform a resale as part of a due and proper business transaction. The Purchaser shall already assign to us its claims arising from the resale of the goods subject to retention of title, in particular the payment claims against its customers. We shall accept this assignment. The Purchaser shall be under the obligation to notify its debtors of the assignment on our request. Any receivables and names of the Purchaser's debtors shall be communicated to us.
3. The Purchaser shall be entitled to collect receivables from the resale. In the event of payment default, or if we become aware of circumstances which according to our commercial assessment reduce the creditworthiness of the Purchaser, we shall be entitled to revoke the collection right.
4. Treatment and processing of the goods subject to retention of title shall be performed by us a manufacturer within the meaning of Article 950 BGB (German Civil Code). If the goods subject to the retention of title are processed or mixed with other items that we do not own, then we shall acquire co-ownership of the new item in proportion to the net invoice value of the goods subject to retention of title to the net invoice value of the other goods used at the time of processing or mixing.
5. A transfer of security of the goods to which we have title shall be inadmissible. In the case of accesses by third parties to goods subject to retention of title, in particular attachments, the Purchaser shall make reference to our title to the goods and inform us of this immediately by sending a copy of the attachment report.
6. In the event of the Purchaser conducting itself in a manner contrary to its contractual obligations, we shall be entitled to withdraw from the contract and demand the return of the goods delivered by us.

III. Rights of the Purchaser in the event of defects

1. Claims from the Purchaser due to defects pre-suppose that the delivery item does not have the contractually agreed quality or, if such was not agreed, is not suitable for the pre-supposed use according to the contract or for its usual use. For delivery items produced on the basis of a drawing, the delivery item shall be defect-free if it corresponds to the drawing approved by the Purchaser.
2. In the event of the delivery of used devices, we shall not assume any warranty for defects.
3. We shall hereby assign our claims against suppliers of essential third-party products to the Purchaser. The Purchaser can only hold us liable for defects (in court) in essential third-party products if a previous out-of-court claim against the third-party suppliers was unsuccessful.
4. In the event of justified defect notifications, we shall have the right, within a reasonable period and at our discretion, either to repair the defect or deliver a replacement. If the supplementary performance should fail, the Purchaser may reduce the price or – if the contractual breach is not merely minor – withdraw from the contract. If the Purchaser withdraws from the Contract, it shall return the delivery item to us and – regardless of other claims – it shall pay a reasonable amount at a level of the usual rental for the time of use. Any additional legal claims shall remain unaffected.
5. Claims of the Purchaser due to requisite costs for the purposes of the supplementary performance, in particular transport and travel expenses, work and material costs shall be excluded if these expenses increase because the delivery item has been subsequently shipped by the Purchaser or a third party to another place than the delivery location, unless the transfer corresponds to the intended use of the delivery item and was agreed with us when the contract was concluded.

Within the framework of the supplementary performance, all transport costs incurred shall be assumed by the Purchaser.
6. In the event of a return of the delivery item, the Purchaser shall pay us a compensation for use. This shall be determined based on the usual rental amount.
7. Claims by the Purchaser shall expire after 12 months. This shall not apply if the law of the German Civil Code in Sections 438 Para. 1, No.2, 479 Para. 1 and 634a Para. 1, No.2, prescribes longer deadlines, specifically for buildings and items used for buildings, recourse claims and structural defects.
8. Compensation claims due to defects shall be limited as follows: We shall not be liable for a slightly negligent breach of non-material contractual obligations. Our liability for consequential damages due to defects shall be excluded apart from in the case of intent, gross negligence or breach of material contractual obligations. To the extent we are liable for consequential damages due to defects, liability

shall be limited to foreseeable damages and not attributable to extraordinary circumstances. Material contractual obligations shall include those where their fulfilment is a prerequisite to the due and proper performance of the contract and on compliance of which the Purchaser may rely.

The burden of proof for the facts justifying a limitation of liability shall be incumbent on us.

9. Claims of the Purchaser arising from physical or health impairments or loss of life of the Purchaser or its auxiliary agents which are attributable to us shall not be restricted by the aforementioned limitation of liability. Claims by the Purchaser arising from the Product Liability Act and claims arising from a guarantee given by us as well as any fraudulent concealment of a defect shall be unaffected by this. Statutory limitation periods shall apply to these claims.

C. Specific conditions for assemblies

I. Cooperation of the Purchaser

1. The Purchaser shall provide all the requisite official authorisations, in particular any special authorisations for specific risk situations and for Sunday and Public Holiday working. It will also advise us promptly of any applicable visa and vaccination regulations.
2. The Purchaser shall inform our assembly manager prior to starting the works of any specific safety provisions and danger zones.
3. On the first day of assembly at the latest, the Purchaser shall assign a contact person who shall be responsible for our staff.
4. The Purchaser shall undertake the requisite specific measures to protect staff and materials at the place of assembly. It shall also comply with every reasonable request from our staff regarding additional safety measures. Should these not be in place, our staff shall be entitled to discontinue with the work.
5. If the provision of auxiliary staff has been agreed, then the Purchaser shall make suitably qualified staff available. These persons shall then comply with the instructions of our assembly manager. We shall assume no liability for the workforce provided by the Purchaser.
6. The Purchaser shall create the conditions for a test run after completion of the assembly. If this should not be possible on the part of the Purchaser, then in the event of any potential reworks, any additional travel expenses will be invoiced.

II. Preparatory work, technical support

1. The Purchaser shall create the pre-conditions for a smooth start to the assembly – the requisite items and preliminary work (equipment and setup) are to be finalised as far as possible so that assembly can begin with the arrival of our staff.
2. If we travel directly by car from Oelde we shall bring all the necessary standard tools and hand tools with us. Otherwise, without a separate agreement, the Purchaser shall provide all the usual tools such as standard tools, lifting gear, scaffolding and welding devices. The Purchaser shall provide and guarantee the energy and tools and any further technical support as stated in our order confirmation.
3. The Purchaser shall provide washing opportunities and sanitary facilities. First aid facilities for assembly staff must also be provided. The Purchaser will provide us with a lockable room for our property used during the assembly. It shall also ensure that an appropriate insurance policy is in place.
4. The agreed technical assistance must in particular enable us to start the assembly immediately upon the arrival of our staff and without delays until the acceptance or completion can be performed.

III. Substitute performance, waiting time

1. If the Purchaser does not comply with its obligations in accordance with Clauses C I and/or C II above, then we shall be entitled but not under the obligation, following a prior notification and having set a reasonable extension period, to perform the actions incumbent on the Purchaser on its behalf and at its expense.
2. The Purchaser shall assume any costs that ensue due to waiting times of our staff. This shall not apply if we are responsible for the waiting times. Waiting times shall be charged at the same rate as assembly times.

IV. Defect liability

1. The Purchaser must notify us immediately of any identified defects.
2. Compensation claims due to defects shall be limited as follows: We shall not be liable for a slightly negligent breach of non-material contractual obligations by us or our staff. Our liability for consequential damages shall be excluded apart from in the case of intent, gross negligence or breach of material contractual obligations. Material contractual obligations shall include those where their fulfilment is a pre-requisite to the due and proper performance of the contract and on compliance of which the Purchaser may rely.

To the extent we are liable for consequential damages, liability shall be limited to foreseeable damages and not attributable to extraordinary circumstances. The same limitations of liability shall apply to staff deployed by us. A reverse burden of proof shall not be linked to the above limitations of liability.

3. Claims of the Purchaser arising from physical or health impairments or loss of life of the Purchaser or its auxiliary agents which are attributable to us shall not be restricted by the aforementioned limitation of liability.

V. Performance recording, invoicing and prices

1. The Purchaser shall certify the working hours and work performance of our staff. Upon completion of the assembly it shall provide us with a handover certification.
2. The assembly will be invoiced on an hourly and cost basis. In principle the rates are included in our order confirmation.
3. If our staff are unable to start the assembly on grounds for which we are not responsible or if the assembly is interrupted on grounds for which we are not responsible, our staff shall be entitled, after a reasonable deadline, to depart from the site of the Purchaser at the cost of the Purchaser and then to return to the assembly site for the start/ continuation of the assembly. The Purchaser shall assume the associated costs (arrival and departure travel costs).

D. Guarantee conditions

I. Pre-requisites of the guarantee, duration

1. We guarantee, in addition to the statutory defect liability and over and above this for a period of 24 months after commissioning, however, for a maximum of 30 months after delivery or 4,000 operating hours for high-pressure pumps and pump units, that these are free from material and processing faults. The guarantee further covers the due and proper assembly if this was also commissioned by the Purchaser.
2. In order to assert its rights from the guarantee, the Purchaser must register the delivered product on our portal: portal.hammelmann.com within six months of the commissioning. Non-registered products will not be protected by the guarantee.

II. Scope of the guarantee

1. The guarantee shall cover all parts manufactured by us. For components and devices that we purchased from third-party suppliers – e.g. diesel and electric motors, hydraulic components, pre-pressure pumps – the defect liability or guarantee of the manufacturer shall apply. We shall guarantee, however, the flawless installation of the devices and components of third-party suppliers. The guarantee service must be requested via the current guarantee application. This can be found at www.hammelmann.com/en/warranty/.
2. In a guarantee claim we shall decide between a repair and a replacement. In this regard the repair shall include the exchange of the defective parts including installation. The Purchaser shall assume specific costs for any complicated disassembly and reinstallation.
3. We shall assume the freight costs for the exchanged parts or replacement parts (cheapest shipping method to the destination), and for delivery outside of Europe to nearest seaport or airport.
4. We shall authorize the Purchaser to undertake the repair or exchange of defective parts autonomously, and in this case after prior approval, we shall reimburse it with the associated costs incurred on receipt of an invoice. Defective parts must be returned to us. We shall also be entitled to verify the repair. To this end and after prior agreement, the Purchaser must grant us access to its business premises during normal business hours.
5. For parts produced by us and installed as part of an exchange, a new guarantee for 2,000 operating hours shall apply, a maximum however for a period of 12 months after the installation.

III. Exclusion of the guarantee, costs to be assumed by the Purchaser

1. The guarantee shall not cover wear parts.
2. A guarantee claim shall not apply in the event of breaches by the Purchaser of the operating and maintenance instructions, of improper installation of the item under guarantee in a device unit of the Purchaser or third-party or if inappropriate accessories, tools or spare parts have been used.
3. The Purchaser shall assume the costs associated with the assembly and disassembly of devices in which our product was incorporated.
4. The Purchaser shall assume the costs for transporting the device in or on which our product was installed or assembled. It shall make the guarantee item available for the performance of the repair works at Oelde, or at another jointly agreed location. In relation to the delivery of replacement items the Purchaser shall assume any additional costs if it chooses a more expensive shipping method, import costs including customs, inland freight etc. Any travel costs incurred by us outside of Oelde shall also be assumed by the Purchaser. The Purchaser shall also assume any overtime charges and any additional costs for work performed between 20:00 hours and 07:00 hours and on Saturdays, Sundays and Public Holidays.