

General Terms and Conditions of Business

for Plant and Mechanical Engineering of

Piller Entgrattechnik GmbH, Heimerdingen

Dated 1/05/2011



1. Scope of Application

These Terms and Conditions of Business (T&C) shall apply to all contractual relationships in the field of plant and mechanical engineering as between Piller Entgrattechnik (Supplier) and its customers (Client).

Differing provisions shall, as a principle, require the written confirmation of the Supplier.

The same shall also apply to all agreements made orally.

Differing terms and conditions of business of the contracting partner shall not be binding on the Supplier.

This shall also be the case if an express objection is not raised.

Our terms and conditions for delivery and assembly and invoice rates shall also apply to future business dealings with the Client in the respective version applicable at the time of conclusion of the contract.

The T&C shall also apply if the Client should use standard-form purchasing terms and conditions.

Ancillary agreements and amendments shall only come into effect upon written confirmation.

The same shall also apply to the abrogation of this provision.

2. Offers/Conclusion of Contract

All offers are subject to change.

A contract shall be deemed to be concluded as soon as there is a written order confirmation signed by the Supplier.

All offers shall be subject to the manufacturing data, technical information, models, etc., provided by the Client.

Amendments to the offer shall, as a principle, be subject to the written confirmation of the Supplier. This shall entitle the Supplier to amend its original offer.

The documents/data associated with the offer, such as images, drawings, descriptions, calculations, measurements, etc., shall become binding upon a written order or, as the case may be, order confirmation.

Statements in offers and order confirmations of the Supplier that are based on an obvious error, namely a clerical error or a miscalculation, shall not be binding on the Supplier.

The obviously intended statement shall apply.

The Supplier reserves title and copyright over all estimates of costs, drawings and other documents.

Third parties may not be granted access to such documents.

The Client may only make such plans designated confidential by the Supplier accessible to third parties with the written consent of the Supplier.

A request for surrender of documents of the Supplier shall be met without limitation and at any time.

3. Terms and Conditions of Delivery and Performance

The written order confirmation of the Supplier shall be controlling in respect of the scope of delivery and performance.

The same shall also apply to other performances.

The terms and conditions of delivery and performance of the Supplier are incorporated into the General Terms and Conditions of Business in their entirety.

Technical acceptance testing shall take place at our premises before delivery of our plant/machines (circa 8 days).

Technical acceptance testing may not be delayed unreasonably.

Should the Client fail to comply with the written request to be present at the acceptance testing within 14 days, the plant shall be deemed to have passed acceptance testing, and we may issue the notification of readiness for delivery.

The general terms and conditions of the VDMA (Verband Deutscher Maschinen- und Anlagenbau - German Engineering Federation) shall apply in further respects.

4. Delivery Periods and Dates

The date of deliveries and performance is approximate and non-binding, unless otherwise contractually agreed.

Conditions for timely delivery dates are the receipt of all documents to be provided by the Client, the required approvals, execution details, authorisations and compliance with the agreed terms of payment, including those under previous contracts.

The delivery date shall be deemed to be met upon notification of readiness for shipment or dispatch of the goods.

A further important condition is timely delivery on the part of our suppliers.

Should circumstances occur that are outside of the will/responsibility of the Supplier and that render its performance impossible, such as *force*

majeure and other unforeseeable, exceptional circumstances not owing to the fault of the Supplier, e.g. difficulties in acquiring materials, disruptions to business, strikes, lock-outs, lack of means of transport, administrative actions, difficulties in supply of energy, natural catastrophes, etc., including where such circumstances are suffered by our suppliers, the times for delivery and performance shall be extended by a reasonable length if the Supplier is prevented by such circumstances from performing its obligations.

Should the aforementioned circumstances render delivery or performance impossible or unreasonable, the Supplier shall be released from the obligation to make delivery or effect performance.

The Client may not assert any claims for damages hereunder

A contractual penalty for delayed delivery/performance is not permitted.

4. Acceptance Testing

There is usually technical acceptance testing of our machinery at the Piller premises 6 working days before the planned delivery.

Technical acceptance testing may not be delayed unreasonably.

Should the Client fail to comply with the written request to be present at the acceptance testing within 10 days, the plant shall be deemed to have passed acceptance testing, and we may issue the notification of readiness for shipment.

6. Prices

Unless otherwise agreed, prices shall be considered as without any deduction and subject to value-added tax in the respective statutory amount in euro with supply on an ex-works basis at Heimerdingen.

Additional costs, regardless of their nature, shall be borne by the Client.

In the event of material changes in the costs of materials, salaries, pay or other costs impacting on the price, or any such changes in respect of our suppliers, the Supplier may adjust the price.

The Supplier shall provide written notice hereof. Any subsequent changes to the order requested by the Client shall also establish a right to adjust the price.

7. Payment Terms

Payments shall become due upon receipt of our invoices.

Payments shall be made to the account of the Supplier as follows: 30% advance payment upon receipt of the order confirmation; 40% after delivery, but no later than one month after the stipulated delivery date, unless the delivery is delayed for reasons caused by the Supplier; 30% upon handover in an operational state and transfer of risk of the plant/machines.

The respective invoices shall be paid within five days from the date of invoice, without deduction of any taxes and/or fees whatsoever.

In the event of partial performance/delivery, the price shall be due to the extent of the partial performance/delivery.

Upon expiry of the payment period, the Client shall be in default of payment even without any particular warning.

Default interest shall be based on the basis interest rate under Para. 247 of the German Civil Code (BGB) published by the German Bundesbank in the Federal Gazette in addition to a 6% risk premium from the date of default of payment.

The default interest rate shall be 6% at a minimum.

Set-off of the costs incurred with counter-claims that are subject to the statute of limitations or that are disputed is ruled out.

The withholding of payment due to claims of the Client that are disputed by the Supplier is ruled out.

Regardless of the method of payment used, payment shall be deemed to be made once the full invoice amount is irrevocably credited to the account of the Supplier.

In the case of delayed payment, the Supplier may cease performance of its own obligations pending receipt of the payment, subject to a written notice to the Client.

Should the Client be more than 3 months in default of payment, the Supplier may rescind the contract by way of a written notification to the Client and assert damages against the Client for losses incurred.

The damages may not exceed the agreed overall cost.

8. Reservation of Title

Delivered plant/machines shall remain the property of the Supplier pending full payment of the purchase price.

In the event of breach of material contractual obligations, in particular default of payment, the Supplier shall be entitled to take back the plant/machines, and the Client shall be obliged to surrender such plant/machines.

The Supplier shall be entitled to store or have stored, or to collect or have collected, property subject to reservation of title at or from the Client. Where the Supplier takes back property subject to reservation of title, this shall not necessarily imply rescission from the contract.

The Client may not pledge, sell or surrender as a security the items delivered before transfer of ownership.

An application for the opening of insolvency proceedings over the assets of the Client shall entitle us to rescind the contract and demand the immediate return of the items delivered.

We reserve title over the delivered items until receipt of all payment arising out of the supply contract.

Should the buyer not fulfil its contractual obligations, in particular in the event of default of payment, we shall be entitled to withdraw from the contract and demand surrender of the item delivered; the buyer shall be obliged to surrender the item.

The buyer is entitled to sell the delivered item in the ordinary course of business.

It here now assigns to us all claims in the amount of the invoice amount of our claim or, as the case may be, the value of the delivered property subject to retention of title that it holds against a third party due to such further sale.

We hereby accept the assignment.

Under this assignment, the buyer is authorised to collect the claim.

We reserve the right to collect the claim ourselves should the buyer fail to comply duly with its payment obligations and be in default of payment.

9. Impossibility of Performance/Cancellation

Should circumstances occur that lie outside of the will of the Supplier and render its performance impossible, it shall be released from the obligations under this contract.

The Client shall not hold a claim for damages in this case.

The Supplier shall be entitled to require adequate security for its claims against the Client and, in the event of default of payment of the Client or impending court administration or insolvency proceedings, to cease all further performances immediately.

10. Warranty

The warranty shall be for a period of 12 months or, where chosen and paid for, 24 months, calculated from the date of acceptance of the delivery/performance at the Client's premises without shift limitations.

The warranty shall, however, end at the latest 15 months or, where chosen, 27 months after delivery of the plant, regardless of acceptance.

The warranty shall not apply to wear parts that have a shorter working life.

The warranty is conditioned upon the Client operating the plant/machine correctly in accordance with the operating instructions, heeding all notices and complying with the stipulated service intervals.

Service and maintenance work that are not the responsibility of the Supplier shall also be invoiced during the warranty period.

Notices of defects from the Client must be made within 14 days of receipt of the plant/machine at the latest in writing to the Supplier.

Should the plant/machine delivered by the Supplier be assembled or, as the case may be, used for its intended purpose, the delivery shall be deemed to have been accepted.

Defects that are based on insufficient preparation of the Client shall not fall under the warranty.

Any further liability of the Supplier for any damages, regardless of their nature, in particular subsequent damages, is ruled out.

The Client must properly comply with its obligations to carry out an inspection and give notice of defects in accordance with Para. 377 of the German Commercial Code (HGB) and to inspect the goods received immediately in respect of defects, quality, warranted characteristics, etc..

The Supplier should be notified of manifest defects within a week by way of written notification.

Concealed defects should be reported immediately upon such defects becoming recognisable.

Liability for defects shall not arise for natural wear and tear and also not for damage caused by the following reasons:

unsuitable and improper usage, defective assembly or operation by the Client or third parties, defective or negligent handling, excessive usage, unsuitable operating materials, third-party replacement parts and incorrect replacement materials, provided the Supplier is not at fault.

Any liability whatsoever is ruled out in the case of changes and repairs that are improperly carried out by the Client or third parties.

In respect of built-in parts or other goods from our suppliers, the liability of the Supplier shall be limited to the assignment of the liability claims against our suppliers.

On a request of the Client, the Supplier shall be obliged to disclose the name and address of the respective supplier.

Where work is done on the basis of designs, plans, etc. the Supplier shall not be obliged to inspect whether the documents provided are correct.

Further claims of the Client, in particular claims for compensation of damage not caused by the item delivered itself, are ruled out, unless they are based on intent or gross negligence.

The guarantee period shall expire after 6 months from the date of receipt of the goods in the case of hidden defects.

11. Shipment, Packaging and Transfer of Risk

Risk shall transfer to the Client upon hand-over of the delivered goods or plant/machine to the carrier or, at the latest, upon departure from the works site.

Should the plant/machine be ready for shipment and shipment or acceptance be delayed due to reasons for which the Supplier is not responsible, risk shall transfer with the notice of readiness for shipment to the Client.

Should the plant/machine be ready for shipment and not be collected, the Supplier shall be entitled to store the plant/machine at the cost of the Client.

The Supplier shall be entitled, commencing from the first week after notice of readiness for shipment, to invoice storage costs in the amount of 0.5% of the invoice sum for each week commenced.

Storage costs shall be limited to 5% of the value of the goods, unless higher costs can be demonstrated.

The Supplier is entitled, but not obliged, to insure deliveries against transport losses in the name and on the account of the Client.

12. General Remarks

The customer shall bear all taxes, fees and duties associated with this performance outside of the Federal Republic of Germany and, where applicable, reimburse us of such items.

Reimbursement of return transport costs of packaging and packaging material is ruled out.

Should individual provisions of these General Terms and Conditions of Business or the agreement be or become invalid either in full or in part, the remaining provisions shall be unaffected.

13. Place of Performance and Jurisdiction

Place of performance shall be 71254 Ditzingen-Heimerdingen.

German law shall apply to all disputes arising out of this agreement.

Place of jurisdiction shall be Stuttgart.