

## GENERAL TERMS AND CONDITIONS OF DELIVERY

(as of: August 2018)

### 1. General, Scope of Application

- 1.1 These General Terms and Conditions of Delivery by Hennecke OMS (hereafter: "Supplier") apply to all business relations with entrepreneurs ("Imprenditore", section 2082 of the Italian Civil Code), legal entities or special funds (hereinafter: "Customer") concerning the delivery of new machines and/or equipment. If between Supplier and Customer further services have been agreed upon, the supplier's distinct terms and conditions apply; those terms can be found here: [www.hennecke-oms.com/en/gtc](http://www.hennecke-oms.com/en/gtc). The General Terms and Conditions of Delivery in their respective version also apply as a framework agreement for future contracts for the above mentioned deliveries or offers to the Customer, without the Supplier having to refer to them in each individual case.
- 1.2 Any deviating or supplementary terms and conditions of the Customer shall only become part of the contract if and to the extent that the Supplier has expressly agreed to their validity.
- 1.3 Deviating or supplementary agreements to these terms of delivery as well as modifications of content require the written form and are to be agreed individually. This also applies to a waiver of the text form requirement itself.

### 2. Offer and Conclusion of Contract

- 2.1 All offers made by the Supplier are subject to change and non-binding. All orders placed by the Customer are considered as binding contractual offers. The Supplier may accept these offers within 4 weeks upon reception. Acceptance can be declared either in written form (e.g. by order confirmation) or by delivery of the goods to the Customer.
- 2.2 The information provided by the Supplier regarding the deliveries or services (e.g. weights, dimensions, utility values, load-bearing capacity, tolerances, technical data or product designations) as well as presentations are subject to change without notice, provided that the delivery item is not substantially changed or its quality improved as a result and that the changes or deviations are reasonable to the Customer.  
  
Information's provided by the Supplier regarding the delivery item or services are merely descriptions and do not constitute any warranty or guaranty.
- 2.3 The Supplier retains ownership and copyright to all documents. They may not be made accessible to third parties or used for advertising purposes and must be returned on request and, if necessary, verifiably deleted. Documents are only to be used within the framework of the contract, in particular they may not be used for the reproduction of identical or similar products (reverse engineering). Construction drawings are not submitted.

### 3. Pricing and Payment

- 3.1 Unless otherwise agreed upon, prices are ex works plus statutory value-added tax, assembly, commissioning and packaging, in the case of export deliveries plus customs duty and other fees or public charges. The Supplier will not take back the transportation packaging or any other packaging under the EU Packaging Directive (Direttiva 94/62/CE sugli imballaggi e i rifiuti di imballaggio); said packaging shall become the property of the Customer.
- 3.2 If the agreed prices are based upon Supplier's list prices and delivery is not to be effected within four months after conclusion of the contract, the Supplier's list prices valid at the time of delivery (less any agreed percentage or fixed discount) shall apply.
- 3.3 Invoices are issued upon transfer of risk and are due immediately without any deductions. The Customer is in default 14 calendar days after transfer of risk and invoicing without further ado. The date of receipt by the supplier shall be decisive for the date of payment. Cheques are only considered as payment after they have been successfully cashed. Regardless of any other claims for compensation, if the Supplier is not at fault, he is entitled to suspend his own contractual obligations in

the event of payment arrears until the outstanding payments have been settled.

- 3.4 The Customers offsetting with counterclaims or the retention of payments due to such claims is only permissible if the counterclaims are undisputed or have been legally established (res judicata).
- 3.5 The Supplier is entitled to carry out or render outstanding deliveries or services only against advance payment or provision of security if, after conclusion of the contract, he becomes aware of circumstances which are capable of substantially reducing the creditworthiness of the Customer and which jeopardize the payment of Customers debts owed to Supplier under any contract (including other individual orders subject to the same framework agreement).

### 4 Delivery and Delays

- 4.1 Delivery shall be ex works, which also constitutes the place of performance. At the request and expense of the Customer, the goods will be dispatched to another destination (sale by delivery to a place other than the place of performance). Unless otherwise agreed upon, the Supplier is entitled to determine the type of dispatch (in particular transport company, dispatch route, packaging). The costs of shipment shall be borne by the Customer.
- 4.2 The delivery periods stated by the Supplier are non-binding, unless expressly binding deadlines are stated in the order confirmation. If dispatch has been agreed upon, delivery periods and delivery dates refer to the time at which the purchased item leaves the Supplier's warehouse or at which the Supplier has notified the Customer that it is ready for dispatch.
- 4.3 Compliance with delivery deadlines by the Supplier presupposes that all commercial and technical questions between the contracting parties have been resolved and the Customer has fulfilled all obligations incumbent upon it, e.g. the provision of the necessary official certificates or permits or the furnishing of a deposit. If this is not the case, the delivery period shall be extended accordingly. The latter does not apply if the Supplier is responsible for the delay.
- 4.4 If the Customer is in default of acceptance or consciously in negligence, the Supplier is entitled to demand compensation for the resulting damages, including any additional expenses. The Supplier also reserves explicitly the right to assert further claims. If the above conditions are met, the risk of accidental loss or accidental deterioration of the object of purchase shall pass to the Customer at the point in time at which the latter is in default of acceptance or debtor's delay.
- 4.5 The Supplier shall not be liable for the impossibility of delivery or for delays in delivery if these are caused by force majeure (e.g. natural disasters, war, unrest) or other events not foreseeable at the time the contract was concluded (e.g. the Supplier is not responsible for any interruptions of operations of any kind, transport delays, strikes, legal lock-outs, lack of manpower, energy or raw materials, difficulties in obtaining necessary official approvals, official measures or the lack of, incorrect or untimely delivery by suppliers). If such events make the delivery or service considerably more difficult or impossible for the Supplier and the hindrance is not only of a temporary duration, he is entitled to withdraw from the contract. In the event of obstacles of temporary duration, the delivery deadlines or service periods shall be extended or the delivery or service periods postponed by the duration of the hindrance plus an appropriate start-up period. If acceptance of the delivery or service cannot reasonably be expected of the Customer as a result of the delay, the Customer may withdraw from the contract by immediate declaration in text form to the Supplier.
- 4.6 The Supplier is only entitled to make partial deliveries if those can be used by the Customer within the scope of the contractual purpose, the delivery of the remaining ordered goods is guaranteed and the Customer does not incur any considerable additional expenditure or costs as a result.

4.7 If the Supplier is in default with any delivery or service or if a delivery or service becomes impossible for him, for whatever reason, the liability of the Supplier is limited to damages in accordance with Clause 7 of these General Terms and Conditions of Delivery.

4.8 In the case of deliveries that are – at the request of the Customer and after conclusion of the contract – to be made later than originally agreed upon, payment shall be made as originally agreed upon. This also applies in the case, if the customer does not accept the delivery at the contractually agreed time. The costs for any necessary storage of the goods and other costs incurred by the delay will be charged to the Customer.

## 5. Passing of risk and Acceptance

The risk shall pass to the Customer at the latest when the delivery item has left the factory. This also applies if partial deliveries are made or if the Supplier has undertaken to provide other services (e.g. dispatch or installation). If dispatch or delivery is delayed due to a circumstance caused by the Customer, the risk shall pass to the customer from the day on which the Supplier is ready for dispatch and has notified the customer thereof.

If the Customer is obliged to accept the goods, acceptance must take place immediately at that time or, if no acceptance date has been specified, after notification of readiness for acceptance by the Supplier. The Customer may not refuse acceptance in the event of a minor defect.

## 6. Title retention

6.1 Goods delivered by the Supplier shall remain the Supplier's property until all the Supplier's claims arising out of the entire business relationship with the Customer have been fulfilled in full, in particular until he has settled the account balance.

6.2 The Customer is obliged to carefully store, maintain and repair the goods delivered under retention of title at his own expense and to insure them against fire, water damage, burglary and theft and damage. The Customer shall be obliged to notify the Supplier immediately of any damage to the reserved property. On request, the insurance policy is to be sent to the supplier for inspection. The Customer assigns to the Supplier in advance all claims against the insurance company arising from the insurance contract. The assignment is accepted by the Supplier. If the Customer has not sufficiently insured the goods/services to be delivered, the Supplier is entitled but not obliged to insure the delivery item at the Customer's expense.

6.3 In the event of seizure or other access by third parties to the reserved property, the Customer must inform the Supplier immediately in written form.

6.4 The Customer is entitled to sell the goods subject to retention of title within the framework of proper business transactions as long as he is not in default of payment. The goods may not be pledged nor shall title thereto be transferred as security. The claims arising from the resale or any other legal reason (in particular transfer of ownership to the end customer, insurance case, tort) in respect of the reserved goods are hereby assigned by the Customer to the Supplier in full by way of security. The assignment shall be accepted by the Supplier. The supplier revocably authorizes the purchaser to collect the claims assigned to the Supplier for the Supplier's account in his own name. If the Customer is in breach of contract – in particular if he is in default with the payment of a claim for payment – the Supplier may demand of him to disclose the assignment and to hand over all information's and documents necessary to enforce the claim.

6.5 In the event of breach of contract by the Customer, in particular in the event of default in payment, the Supplier shall be entitled, after setting a reasonable deadline, to take back the reserved goods at the Customers expense. If the Supplier takes back the goods, this shall constitute a withdrawal from the contract. After taking back the goods, the supplier is authorized to dispose of them. The proceeds of the sale shall be set off against the customer's liability - less reasonable costs of sale.

6.6 If the goods subject to retention of title are combined with other objects to form a new object, the title retention shall stay valid and continue in respect of the newly created object. The Supplier

thereby acquires a co-ownership share in proportion to the value of the reserved goods to the value of the new item. If one of the combined items is to be regarded as the main item, the Customer shall transfer co-ownership to the Supplier in the ratio of the value of the goods delivered by the Supplier to the value of the new item. The Customer shall keep the new item in safe custody free of charge with regard to the Supplier's co-ownership share. If the goods subject to retention of title are resold as part of the new item, the advance assignment agreed in accordance with Clause 6.4 shall only apply in the amount of the invoice value of the goods subject to retention of title by the Supplier.

6.7 If the value of the securities to which the Supplier is entitled according to the provisions above exceeds his claims by more than 20%, the Supplier is obliged to release the excess value. The Supplier has the right to select the securities to be released.

6.8 If the law of the country in which the delivery item is located does not permit a retention of title or only in a limited form, the Supplier may reserve other rights to the delivery item. The Customer is obliged to cooperate by any means necessary (e.g. registrations) to safeguard the retention of title or to create such other rights, which replace the retention of title, and to further the protection of these rights.

## 7. Damages

7.1 The Supplier shall be liable for any breach of material contractual obligations (i.e. contractual obligations, the fulfilment of which gives the contract its character and makes its proper performance possible in the first place), in accordance with the statutory provisions (negligence), unless otherwise agreed below. The Supplier shall not be liable for any other breaches of contract, unless damage has been caused intentionally or grossly negligently by one of its legal representatives or by a leading vicarious agent. Likewise, the Supplier shall only be liable for consequential damages, if the consequential damage can be attributed to a breach of duty caused by wilful intent or gross negligence by the Supplier.

7.2 In the absence of intentional conduct attributable to Supplier, the latter shall be liable only for the reasonably foreseeable damage that occurs in a typical case.7.3 Liability under art. 2043, 2049, 2050 and 2051 of the Italian Civil Code remains unaffected this also applies to liability for culpable injury to life, body or health.

7.4 Unless otherwise provided above, claims against the Supplier for damages arising out of a breach of duties shall be excluded.

7.5 The claims for damages under Clauses 7.1 to 7.2 above shall prescribe in accordance with the statutory periods.

## 8. Warranty

8.1 Warranty claims against the Supplier are subject to the fulfilment of inspection and notification obligations incumbent on the Customer for obvious defects of the goods and services rendered by Supplier.. In case, Customer does not report any obvious defects immediately after arrival of the goods and services at Customers place of business, the defects shall be deemed as accepted.

8.2 If the Supplier's deliveries or services prove to be defective, the Supplier shall be obliged to remedy the defects at its discretion by elimination of the defect or by making a replacement delivery. In the event of a replacement delivery, the Purchaser must return the defective item to the Supplier in accordance with the statutory provisions. The Supplier shall bear the expenses necessary for the purpose of supplementary performance, in particular transport, labour and material costs; however, this shall not apply if the costs increase because the delivery item is located at a location other than the location of the intended use.

8.3 The Supplier shall be entitled to make the supplementary performance owed conditional upon the Customer paying the purchase price. However, the customer is entitled to retain a reasonable part of the purchase price in proportion to the defect.

8.4 If the subsequent performance fails twice, the Customer can reduce the purchase price or withdraw from the contract. However, a right of withdrawal does not exist in the case of an negligible defect. In addition, the Customer may claim damages

in accordance with Clause 7. Further warranty claims for defects are excluded.

- 8.5 Save in the case of bad faith, and subject to the provisions of Clause 7.5, all warranty claims shall prescribe 12 months after delivery or, if acceptance is required, after acceptance.
- 8.6 Ordinary wear and tear is excluded from the warranty. Ordinary wear particularly affects wear parts such as, without limitation, filter elements, shaft seals (e.g. on pumps, stirrers etc.), seals in general, injectors, diaphragms, high pressure lines etc.
- 8.7 Any form of warranty is excluded if the Customer himself or a third party not commissioned by the Supplier causes a failure or damage, by use not in accordance with the contractual purpose, by assembly, installation or commissioning instructions not in compliance with the instructions provided by the Supplier, by an operating error or by improper maintenance, e.g. by the use of unsuitable maintenance equipment, or if the Customer himself or a third party not commissioned by the Supplier makes a substantial modification to the delivered item.
- 8.8 The machine components are designed and selected for the use with commercially available, non-aggressive PU raw materials. Raw materials with a corrosive or abrasive effect, which react strongly acidic or alkaline due to additives, or which contain crystalline or mineral solids, can lead to increased wear and thus reduced service life. The customer is solely responsible for the consequences of the use of such raw materials.

#### 9. Information and Technical Advice

The information and recommendations of the Supplier are non-binding and without any liability, unless the Supplier has expressly and in text form undertaken otherwise. The Customer shall be responsible to investigate whether a product is suitable for the Customer's particular requirements. Any details and information provided by the Supplier in relation to its goods do not constitute any promise as to their suitability for the Customer's purposes.

#### 10. Software

- 10.1 If software is included in the scope of delivery, the Customer is granted a non-exclusive right to use the delivered goods including their documentation. However, software is made available solely for use with those deliverables for which it is intended. Use of the software on more than one system is prohibited.
- 10.2 The Customer may only copy, revise, translate the software or convert the object code into the source code within the legally permissible scope Articles 64-bis and seq. of the Italian Law on Copyright). The Purchaser undertakes not to remove manufacturer's details - in particular copyright notices - or to alter them without the Supplier's prior express consent.
- 10.3 All other rights to the software and the documentation, including copies thereof, shall remain with the supplier or the supplier of the software respectively. The granting of sublicenses is not permitted.
- 10.4 To the extent that software is included in the scope of delivery in the machine and plant documentation, this shall be limited to the software required in the event of a failure, loss or similar event to restore the original condition of the delivered machine/plant (backup software).
- 10.5 Insofar as the scope of delivery includes software for which the supplier only has a derived right of use, i.e. software whose rights holder is a third party, the terms of use of the rights holder shall take precedence. If the terms and conditions of use of the rights holder are not contained in the machine and plant documentation, the Supplier shall make the terms and conditions of use communicated to him by the third party available on request. Actions requiring consent pursuant to Articles 64-bis and ff. of the Italian Law on Copyright are in any case only permissible with the consent of the rights holder. If the Customer wishes to carry out such an act requiring consent, the Supplier shall, upon the Customer's instruction, request the consent of the rights holder.
- 10.6 Modifications to the machine code included in the control software are subject to the express approval of Supplier's Electrical Design Department.

- 10.7 If the Supplier installs software by means of remote maintenance without being personally on site for its commissioning, the Purchaser shall take all appropriate measures at the time of commissioning and during the initial phase of operation to keep any damage caused by possible malfunctions of the software to a minimum. This includes the performance of functional system tests affected by remote maintenance, increased monitoring of the functional and machine parameters during the initial period and the possibility of an immediate shutdown of the system in the event of malfunctions.

#### 11. Choice of Law, Jurisdiction, Place of Fulfilment

- 11.1 The place of fulfilment for all Supplier's and Customer's obligations shall be the Supplier's registered office, unless otherwise specified or another place of performance arises from the nature of the obligation.
- 11.2 Italian law shall apply to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).
- 11.3 It is agreed that the place of jurisdiction shall be Monza. In addition, we may assert any of our claims at the Customer's place of general jurisdiction. We may also opt to have any and all disputes arising out of the business relationship with the Customer finally resolved in accordance with the Rules of Arbitration of the International Chamber of Commerce (ICC) by one or more arbitrators appointed in accordance with said Rules. At the Customer's request, we must exercise this option with respect to a specific dispute within a period of one week from receipt of such request by making a statement to that effect vis-à-vis the Customer, if the Customer intends to initiate legal proceedings against us.
- 11.4 Agreements concluded in accordance with these Terms and Conditions of Delivery shall remain binding even if individual provisions are void. In that case all remaining provisions remain in force.

Hennecke OMS

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Customer (for acceptance)

Pursuant to and for the purposes of Articles 1341 and 1342 of the Italian Civil Code, the Customer specifically approves, after careful reading, the provisions set forth in articles 5 (Passing of Risks and Acceptance), 6 (Title retention), 7 (Damages), 8 (Warranty) and 11 (Choice of Law, Jurisdiction, Place of Fulfilment).

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Customer (for acceptance)