

**General Terms and Conditions of Delivery of
Hymmen GmbH Maschinen- und Anlagenbau (January 2017)**

I. In general

1. Our Terms and Conditions of Sale shall apply exclusively; we do not recognise any terms and conditions of the Customer that conflict with or differ from our Terms and Conditions of Sale. The application of the general terms and conditions of our customer, where these are worded otherwise remains excluded for this order and all subsequent orders. The validity of such other conditions is expressly contradicted. Our Terms and Conditions of Sale are applicable even if we deliver unconditionally to the Customer in the knowledge that the terms and conditions of the Customer conflict with or differ from our Terms and Conditions of Sale.
All agreements which have been reached between us and the Customer for the purpose of executing this contract are set forth in writing in this contract.

Amendments, supplements and any verbal agreements require our confirmation in writing.

Unless otherwise agreed, a contract is concluded only after our written acknowledgement of order.

2. We reserve the ownership rights and copyrights to tender documents, samples, quotations, drawings and similar information of a physical and non-physical nature, also in electronic form; they may be neither forwarded, published, duplicated nor otherwise made accessible to third parties without our written consent. Upon request the documents shall be returned without withholding copies.

The pictures contained in our catalogues and brochures as well as the weights, outputs and other technical data are subject to change and shall not be definitive for the content of the contract. In each individual case, the content of our order acknowledgement alone shall be valid.

3. Our offers shall be binding on us for a period of 30 days.

II. Prices and payment

1. Unless otherwise agreed, all prices shall be understood ex-works, excluding packaging, shipment and loading. Prices do not include VAT, which must be paid additionally at the applicable statutory rate.

The deduction of discount is subject to separate written agreement.

Shipment is made on account of and at the risk of the Customer, even when carriage paid has been agreed. To be valid, the latter requires a special contractual price agreement; shipment is then effected carriage forward and the freight advanced by the Customer is deducted from the invoice.

2. As regards the due date of the individual payments, the agreements of our present offer apply with binding effect.

3. Should the Customer get into arrears with payment, all claims shall become payable immediately, even if we have accepted bills of exchange for their settlement. We are entitled to charge interest of 8% above the current German Bundesbank base rate from the first day of arrears in accordance with § 247 of the German Civil Code (BGB).

4. The right to withhold payments or to offset them against counterclaims is excluded, unless the counterclaims are undisputed or have been established by a court of law.

5. In the event of the Customer's insolvency, we are entitled to keep any payments on account made. This does not exclude our right to assert remaining claims.

6. We will keep an account for the Customer. Irrespective of the individual claims' date of origin, we will use the Customer's payments to pay off firstly costs, interest and the part of the main claim which is not secured by reservation of title, and then the secured main claim. This also applies to payments through which bills of exchange from certain contracts are honoured.

III. Delivery times, delay in delivery

1. Commencement of the delivery period we have specified shall be conditional upon all technical issues having been clarified in advance and upon all commercial and technical issues between the contracting parties having been clarified and upon the Customer having met all the obligations incumbent upon it, such as providing the requisite official certificates or approvals or making a down payment. If this is not the case, the delivery time shall be extended accordingly. Furthermore the delivery dates and delivery periods shall generally always only apply approximately due to the complexity of our products.

2. Observance of the delivery period is subject to our receiving correct and punctual delivery from our suppliers. Customers will be informed of any delays as soon as possible.

3. The delivery period is deemed to have been kept when the article to be supplied has left our factory prior to the expiry of the said period, or when we have provided notification of our readiness for shipment. If the article requires acceptance, the acceptance date, or alternatively the notification of readiness for acceptance, is authoritative - except in the event of justified non-acceptance.

4. Should shipment or acceptance of the article be delayed for reasons for which the Customer is responsible, he shall bear any costs incurred as a result of the delay as of one month after notification of readiness for shipment or readiness for acceptance.

5. In the event of any delays caused by force majeure, riots, strikes, lockouts or production stoppages or other events beyond our control (including those affecting our suppliers), the delivery date shall be extended by an appropriate period, at least until the problem concerned has been rectified. In such an event, we are entitled, to the exclusion of any claims for compensation, to terminate the contract completely or in part after expiry of an appropriate period of time.

6. The Customer is entitled to terminate the contract without setting a time limit, if we are unable to effect the entire performance before the passing of risk. If this inability or impossibility of performance occurs during the delay in acceptance or if a Customer is solely or predominantly responsible for the circumstances leading to it, he remains obliged to effect counter-performance.

7. Claims for compensation in the event of delayed delivery are excluded unless the damage is based on deliberate or grossly negligent conduct by us or our legal representatives or vicarious agents or is caused by the negligent breach of an obligation essential for the implementation of the contract. In these cases our liability to pay compensation is limited to the foreseeable, typically occurring damage. In the case of the clear non-observance of delivery dates or deadlines for which we are responsible, the Customer has the right to withdraw from the contract after setting a reasonable period of grace with the declaration that it will refuse acceptance or performance after expiry of the time limit.

IV. Bearing the risk, acceptance

1. The risk shall pass to the Customer as soon as the article for delivery has left our factory; the same is true of partial shipments or in cases where we have undertaken to perform extra services such as accepting the shipping charges or delivery and installation. Acceptance of the delivered articles is deemed to be effected after reception of the articles in the premises of the customer and a reasonable time period for notification of possible defects. The Customer may not refuse acceptance on account of immaterial defects.

2. In the event of delay or default of shipment or acceptance as a result of circumstances for which we are not responsible, the risk passes to the Customer as of the day on which notification of shipment or readiness for acceptance was made. We undertake to take out the insurance policies required by the Customer at the latter's expense.

We are entitled to effect partial deliveries.

V. Retention of title

1. The article(s) delivered remain our property until such time as all claims, also future, contingent or deferred claims, including incidental claims, compensation claims and bills of exchange have been paid in full and all checks have been cashed.

2. We are entitled to insure the article(s) to be delivered at the expense of the Customer against theft, breakage, fire, water and other damage, unless there is documentary evidence that the Customer has taken out such insurance himself.

The Customer shall assign any insurance claims he may have for damage, destruction or theft of the delivered article(s) to us as of now, in case the articles are combined with third-party goods, in the same proportion as the value of the article delivered by the seller corresponds to the complete article.

3. The Customer shall only avail of the delivered goods in his normal course of business. The Customer may not sell, pledge or provide the goods as security. In the event of pledging, attachment or other disposition by third parties, the Customer shall notify us of this immediately.

Should the Customer act contrary to the terms of the contract, in particular by being in arrears with payment, we are entitled to take back the article(s) delivered after reminder, and the Customer is obliged to return it/them.

4. On the basis of retention of title, we are entitled to demand the return of the article(s) delivered if we have terminated the contract.

5. Filing a petition for the commencement of insolvency proceedings entitles us to terminate the contract and demand the immediate return of the delivered article(s).

6. The Customer shall assign to us as of now any claims against his buyers arising from resale, as well as all claims arising from possible loss or damage to the article(s) delivered by us to the amount of the claim we have against the Customer from the overall business relationship. We are authorized to disclose the assignment as soon as the Customer no longer meets his payment obligations to us.

Should the value of the securities granted to us exceed the value of the claim by more than 20%, we are obliged, on the Customer's request, to release excess securities.

7. Should replacement parts delivered by us be installed in a machine, co-ownership of the machine passes to us in the same proportion as the value of the replacement parts delivered by us corresponds to the value of the machine as a whole.

8. If the Customer combines the delivered article(s) with other articles, this may, to the extent that it is legally admissible, only be for a temporary period or purpose. If the Customer combines, processes or mixes the delivered article(s) permanently, we acquire co-ownership of the entire object, proportionate to the value of the article (plus assembly costs). Both parties are in agreement on the above and also that we shall acquire indirect joint possession.

VI. Claims based on defects

In the event of defects of quality or title, we provide a warranty to the exclusion of further claims - subject to paragraph VII - as follows:

Defects in quality

1. All parts found to be defective due to circumstances arising prior to the passing of risk shall be reworked or replaced with a defect-free article, at our discretion, at no cost to the Customer. The Customer shall provide us with written notification of any such defects without delay. Replaced parts become our property.

2. The Customer must grant us the time and opportunity necessary to effect the rework and delivery of replacements which appear necessary to us. Failure to do so releases us from liability for the consequences resulting from this failure.

3. Insofar as the complaint proves to be justified, of the costs arising directly from the rework or the replacement, we will bear those for the replacement part plus shipment. In addition, we shall also bear the costs of removal and installation, as well as those for providing the required fitters and assistants, including travel expenses, insofar as this does not present an unreasonable burden for us.

4. If we repeatedly fail to meet obligations to remedy defects within a reasonable time period, the Customer may set us a final deadline in writing, within which we have to fulfil our obligations.

If we do not fulfil our obligations within this set time period, the Customer may carry out the necessary repairs itself or arrange for them to be carried out by a third party at our expense and risk.

If the repair has been carried out successfully by the Customer or a third party, all the Customer's claims against us regarding this defect shall be deemed to be settled upon reimbursement of reasonable costs incurred by the Customer.

If the defect is only immaterial, the Customer is only entitled to a reduction in the contractually agreed purchase price. Entitlement to a reduction of the contractually agreed prices is otherwise excluded.

Any further claims are determined in accordance with paragraph VII, clause 2 of these Terms and Conditions.

5. All damage resulting from normal wear and tear, such as damage to rubber rollers and stainless steel strips, is excluded from the warranty.

6. For the following cases in particular, no warranty shall be given; the following list serves as an example and is not exclusive:

Inappropriate or improper use, incorrect assembly and/or commissioning by the Customer or any third party, normal wear and tear, incorrect or negligent treatment, improper maintenance, unsuitable production equipment, defective construction work, unsuitable construction site, chemical, electrochemical or electrical influences, incorrect or neglected treatment.

We are not liable for defects based on materials supplied by the Customer or a design prescribed by the Customer.

7. Should the Customer or a third party effect repairs improperly, we accept no liability for the consequences.

The same applies to any alteration to the article(s) delivered without our prior written approval.

8. Delivery of used machines

As a rule, no warranty shall be given for used machines. In individual cases, a warranty can be agreed depending on the degree of overhaul of the machine in question.

Defects of title

1. The machinery and equipment themselves supplied by us are not encumbered with third-party industrial property rights (device patents, design patents, utility patents, etc.). This undertaking relates to the condition of the individual machine as supplied by us.

2. We do not accept any liability for machinery produced according to a drawing or other specification from the Customer or for a combination requested by the Customer of several machines supplied by us in the event of an infringement of patent or other industrial property rights.

3. We are not liable for infringements of industrial property rights resulting from a work or production process carried out by the Customer with the machinery we supply. Liability is also excluded for products with existing third-party industrial property rights being manufactured on the machinery or equipment we supply.

4. We are not responsible for checking whether third-party rights are infringed as a result of the combination of machinery requested by the Customer, the processes the Customer carries out or the manufacture of products. The Customer shall be liable for all third-party claims arising from such infringements and shall indemnify us from such claims.

VII. Liability

1. If, through our fault as a result of failure to implement or incorrect implementation of proposals and advice made before or after conclusion of the contract or as a result of breaching other contractual collateral obligations, in particular instructions for the operation and maintenance of the delivered article(s), the delivered article(s) cannot be used by the Customer as contractually agreed, the provisions in paragraphs VI and VII clause 2 shall apply to the exclusion of any further claims by the Customer.

2. We are only liable for any damage not occurring to the delivered article(s) itself/themselves, whatever the legal grounds in the event of

- wilful intent,
- gross negligence on the part of the proprietor / executive bodies or executives,
- injury to life, limb or health caused by negligence,
- defects that we have fraudulently concealed,
- defects in the delivered article(s) insofar as we are liable under the Product Liability Law for persons or material damage to privately used articles.

In the event of culpable breach of material contractual obligations we also accept liability in the event of gross negligence on the part of non-executive employees or slight negligence, limited in the latter case to reasonably foreseeable damage typical for contracts of this nature.

Any further claims are excluded. This especially applies to claims for lost production, loss of use, reject production, loss of contracts and lost profit or for payment of a contractual penalty as well as other consequential damage or indirect damage.

VIII. Warranty period / limitation

The warranty period amounts to 12 months, beginning with the date of first board resp. the first produced material, however, not later than 3 months after delivery. Excluded from this 12-months regulation are the electrical component parts as listed under "Standard parts" in the quotation.

For those parts the warranty period stated separately in the quotation and/or order confirmation is valid, beginning with the defined date mentioned above.

The limitation period for all Customer's claims, whatever their legal grounds, is 12 months. For compensation claims according to paragraph VII. clause 2, points a – e the statutory period of limitation applies.

IX. Withdrawal

Should the object of purchase be subject to an export licence from the Federal Republic of Germany, both parties are entitled to a right of withdrawal in the event that the export licence is not granted. The time limit for this right of withdrawal is two weeks from receipt of the notice of rejection from the German Federal Office for Economics and Export Control.

X. Use of software

1. If software is included in the scope of delivery, the Customer shall be granted the non-exclusive right to use both the software and the appurtenant documentation. It is supplied exclusively for use with the delivered article for which it is intended. Use of the software on more than one system is forbidden.

2. The Customer is allowed to reproduce, revise or translate the software or convert the object code into the source code only to the extent permitted by law (§ 69 a ff. Copyright Act). The Customer undertakes not to remove any manufacturer's data nor alter it without our prior express approval.

3. All other rights to the software and documentation including the copies remain the property of ourselves or the software supplier. The granting of sublicences is not permitted.

XI. Place of performance, applicable law, jurisdiction

1. Place of performance for delivery and payment is Bielefeld.

2. The legal relationship between ourselves and the Customer is governed exclusively by German Law.

3. Should any individual provisions of these Terms and Conditions become legally invalid, this shall not invalidate the remaining provisions.