

General Conditions for the supply of technical products and additional conditions for processing contracts („job orders“)

(Edition 2009)

1. General

- 1.1. These General Conditions shall be binding provided that they are declared applicable in the offer or in the confirmation of order, or if they have been agreed upon by the parties in writing or otherwise. Diverging conditions of the customer are only applicable as far as they have been explicitly accepted by Humbel Zahnräder AG (hereinafter called the supplier) in writing.
- 1.2. In order to be valid, all agreements and legally relevant declarations of the parties to the contract must be in writing. Unless otherwise agreed, texts which are transmitted by or recorded on electronic medias shall be equated with written documents.
- 1.3. The English version of these General Conditions is a translation of the German original version. In case of discrepancies or contradictions between the English and the German version, the German version is the governing one.

2. Offers and conclusion of the contract

- 2.1. The contract is deemed to be concluded upon the supplier's written acceptance after receipt of an order (confirmation of order).
- 2.2. Offers without an acceptance period shall not be binding.

3. Scope of supplies and services; technical documents

- 3.1. The scope and performance of the supplies and services are exhaustively specified in the confirmation of order and in documents to which it refers to. Exceeding supplies and services will be charged additionally. Technical improvements or developments may be realised by the supplier at any time as far as they do not result in higher prices.
- 3.2. If drawings or other technical documents are provided, the receiving party shall recognise the other party's property and other rights connected herewith. All technical drawings and documents shall be treated as confidential and may not be made available to any third party without previous written consent of the other party. They may only be used for the purposes for which they were handed over and only to the extent which is necessary to perform the contract. After the termination of the contract, they have to be returned to the other party.

4. Regulations in force in the country of destination

The customer shall, at the latest with the order, draw the supplier's attention to regulations and standards applicable in the country of destination as far as they have an impact on the supplies and services as well as on the safe use. Otherwise, the supplies and services shall comply with the regulations in force at the supplier's domicile, and possibly necessary adaptations to regulations and standards applicable in the country of destination shall be borne by the customer.

5. Prices

- 5.1. Unless otherwise agreed, all prices shall be deemed to be net ex works according to the Incoterms in force at the conclusion of the contract, excluding packaging, in freely disposable Swiss francs. All extra costs in connection with the performance of the contract, such as for insurance, transport, official permissions, taxes, customs duties or other fees are to be borne by the customer.
- 5.2. In case of an increase of the calculated costs between the conclusion of the contract and the performance as stipulated in the contract, the supplier shall have the right to adjust the prices as indicated in the confirmation of order accordingly.

6. Terms of payment

- 6.1. Payments shall be made within 30 days from the date of the invoice. Unless otherwise agreed, one third of the price has to be paid at the conclusion of the contract, one third at the supplier's notification informing the customer that the supplies are ready for dispatch, and the final payment with the delivery.
- 6.2. Payments shall be made at the supplier's domicile at his free disposal, without any deduction for discount, expenses, taxes, fees or the like.
- 6.3. In case of late payment, the supplier reserves the immediate suspension of outstanding supplies and services and is furthermore entitled to claim interest for delay at the rate of 6% p.a. The right to claim further damages is reserved.

7. Reservation of title

Until having received the full payments, the supplier shall remain the owner of all supplies. The customer has the obligation to take at his own costs all the measures necessary to protect the supplier's title (e.g. maintenance, insurance). Furthermore, the customer is obligated at his own costs to cooperate in any measures and formalities necessary for the establishment and maintenance of a valid reservation of title.

8. Time for delivery

8.1. The time for delivery shall start after the conclusion of the contract and the receipt of payments due at that date, the settlement of all official formalities and of the main technical issues. The time for delivery shall be respected if the supplier has notified the customer by that time that the supplies are ready for dispatch.

8.2. If delivery is delayed due to circumstances which cannot be prevented by the supplier despite of using the required carefulness, or if the delivery is delayed due to an act or omission or due to a non- or delayed performance of contractual obligations on the part of the customer, or if there is a case of force majeure such as natural catastrophes, epidemics, war, mobilisation, political riots, embargo, labour conflicts, accident or another occurrence which cannot be prevented by the parties despite of using the required carefulness, the time for delivery shall be extended reasonably.

9. Delay in delivery

9.1. For delayed delivery, the customer may claim liquidated damages of ½% for each full week of delay up to a maximum of 5% of the agreed price for the delayed part of delivery, as far as it can be proved that the delay has been caused through the fault of the supplier and the supplier cannot deliver substitute material to accommodate the customer.

9.2. If the maximum of liquidated damages for delayed delivery is reached, the customer has to grant the supplier a reasonable extension of time in writing. If this extension of time expires unused due to reasons for which the supplier is responsible, the customer shall have the right to refuse the delayed delivery. If a partial acceptance is economically unreasonable for the customer, he has the right to terminate the contract and to reclaim effected payments against the return of effected part-deliveries.

9.3. Due to the delay of supplies and services, the customer has exclusively the titles and claims as mentioned in this article 9. Any exceeding titles or claims are excluded.

10. Packaging, transport and insurance

10.1. The packaging is made by the supplier at the customer's costs and won't be taken back, unless otherwise agreed.

10.2. The transport shall occur at the customer's risk and expense. For objections, the customer has to address to the last carrier as soon as he has received the supplies or shipping documents.

10.3. The insurance of the supplies and services against damages of any kind is incumbent on the customer at his costs, even if it has to be effected by the supplier.

11. Passing of benefit and risk

11.1. Benefit and risk shall pass to the customer at the latest with the delivery of the supplies ex works according to the Incoterms in force at the time when the contract was concluded.

11.2. If the dispatch is delayed due to reasons for which the supplier is not responsible, the risk shall pass to the customer at the moment for which the delivery ex works was originally scheduled, and the supplies shall be stored and insured at the customer's risk and costs.

12. Inspection and acceptance of the supplies

12.1. As far as common practice, the supplier inspects the supplies and services before dispatch. After receipt, the customer shall inspect the supplies and services within a reasonable period and shall be obliged to notify any deficiencies immediately in writing. If he omits such a notice, the supplies and services shall be deemed as accepted.

12.2. Notified deficiencies shall be remedied by the supplier as soon as possible, and the customer has to give the opportunity of doing so.

12.3. Additional acceptance tests have to be agreed separately.

- 12.4. Due to deficiencies of any kind of the supplies and services, the customer has no further claims and titles except those explicitly mentioned in this article 12 and the following article 13.

13. Liability for defects; warranty period

- 13.1. The warranty period is 12 months and begins with the dispatch of the supplies ex works. If the dispatch is delayed due to reasons for which the supplier is not responsible, the warranty period ends at the latest 18 months after the supplier's notice of being ready for delivery.

For parts or workpieces which are replaced or repaired during the warranty period, the warranty period begins again.

- 13.2. If the customer or third parties effect inappropriate repairs or alterations without the supplier's preceding written approval, the warranty expires prematurely. In the same way, the warranty period expires prematurely if the customer does not undertake all necessary measures to reduce the damage, or if the customer does not immediately give the opportunity to the supplier to remedy the deficiency.
- 13.3. Parts of the supplies which become defective during the warranty period due to bad material delivered by the supplier, faulty construction or production shall be, at the supplier's choice, replaced or repaired by the supplier as soon as possible. Replaced parts may be taken back by the supplier and will, in that case, be his property.
- 13.4. Express guarantees are only those which are explicitly designated as such in the contract or in accompanying specifications or duty manuals. The guarantee ends at the latest with the expiry of the warranty period. If the express guarantees are not fulfilled, the customer has the right to claim improvement and he has to give to the supplier the opportunity to carry out the improvement. If the improvement fails, the customer has the right to claim a reasonable reduction of price. In case of important defects which cannot be improved within reasonable time and which reduce the usefulness of the supplies and services considerably, the customer has the right to refuse the acceptance of the defective part, and if partial acceptance is economically not reasonable for the customer, he shall have the right to terminate the contract and to reclaim payments effected for the supplies covered by the termination against their return.
- 13.5. The supplier's warranty and liability are excluded for defects and damages which have their origin in normal wear and tear, improper maintenance, neglect of operating instructions, excessive load, use of unsuitable material, chemical or other influences in the surroundings, works not undertaken by the supplier, or in other reasons for which the supplier is not responsible.
- 13.6. The customer has no further claims and titles arising out of warranty, liability for defects or missing express guarantees beside those explicitly mentioned in this article 13.

14. Additional conditions for processing contracts

- 14.1. For processing contracts, the terms of this article 14 are applicable in addition to the other terms of these general conditions and take precedence over them as far as they lay down something different.
- 14.2. Processing contracts have the meaning of processing work on work pieces delivered by the customer to the supplier for processing, and which is provided by the supplier according to the instructions and technical information of the customer (such as drawings, technical specifications, calculations, descriptions of material or of work procedures etc.).
- 14.3. Tools such as special tools made for the workpieces, patterns, devices, gauges, cutting tools, measuring instruments etc. or other equipment which are made available by the customer to the supplier to fulfil the contract, remain the customer's property and may be only used by the supplier to fulfil the contract. The supplier is obliged to their workmanlike storage, use and maintenance. The customer shall reimburse the supplier's costs for their replacement or repair due to normal wear and tear or other causes for which the supplier is not responsible. After termination of the contract, they shall be returned to the customer on his first demand.

Unless otherwise agreed, tools, patterns, devices or other equipment manufactured or provided by the supplier to fulfil the contract remain his property.

- 14.4. Workpieces to be processed shall be delivered by the customer to the supplier in time and remain the customer's property and at the customer's risk as regards loss or damage as far as the supplier cannot be held liable for any such loss or damage.

The supplier shall subject a visual examination and shall inform the customer immediately of any obvious defect, damages or shortages. Subsequently, the customer shall provide for compensation delivery in time.

- 14.5. The supplier shall carry out the processing work in a workmanlike manner and in accordance with the instructions and technical information of the customer. The Customer shall inform the supplier in time if the workpieces to be processed are subject to any legislation on the control of war material or of other goods. If the supplier, during the processing work, discovers shortages or defects which are a result of errors in the technical information or defects of tools or workpieces provided by the customer, the supplier shall inform the customer without delay. The customer shall remedy such shortages, defects, errors or omissions within reasonable time and shall reimburse any extra costs incurred by the supplier out of this.
- 14.6. During the warranty period, the supplier shall, at his choice, repair or reprocess deficiently processed workpieces, or process new workpieces provided by the customer, and he has to bear all the costs for this incurring in his premises. Unless otherwise agreed, the supplier's warranty and liability is limited in any case to the fivefold of the offered or invoiced processing-price for the affected, deficiently processed workpieces.

The supplier is neither liable that the work pieces provided by the customer for the processing work are free of defects, nor is he liable for their structure or suitability for the processing work, and he shall also not be liable for the correctness and fitness of the technical information and tools made available to him for the processing work. The supplier shall also not be liable for the fitness of the workpieces provided by the customer for processing with regard to the subsequent use as intended by the customer. The supplier is, furthermore, not liable for any claims based on infringements of patents or other intellectual property rights, and the customer holds the supplier harmless if such claims are due to the processing work based on technical information, tools or workpieces provided by the customer.

15. General limitation of liability and exclusion of further liability of the supplier

- 15.1. For all cases of non- or bad performance attributable to a fault of the supplier and not explicitly mentioned in these general conditions, the customer is entitled to grant a reasonable additional period for the supplier to perform the contract correctly. If it lapses due to the supplier's fault, the customer shall have the right to terminate the contract with regard to the supplies and services concerned. If partial acceptance is economically not reasonable for the customer, he shall have the right to terminate the contract and to reclaim effected payments against the return of the supplies already executed. In the case of processing contracts, the supplier shall return the instalments, work pieces, technical information and tools which he received from the customer. If the customer suffers a provable damage, his claim for damages shall be limited to 10% of the price for the supplies and services affected by the termination, and in case of processing contracts his claim for damages shall be limited to 10% of the offered or invoiced processing-price for the workpieces affected by the termination of the contract.
- 15.2. Unless otherwise agreed, all cases of breach of contract and the relevant legal effects, as well as all legal claims and rights of the customer, independent of their legal basis, are exhaustively covered by these general conditions of supply. Therefore, all not explicitly mentioned claims for damages, reduction of price, termination of or withdrawal from the contract, are excluded. By no means shall the customer have the right to claim consequential damages such as pecuniary losses, loss of production, restricted use, third parties' claims for loss of orders or penalties, loss of profit, or any other indirect or consequential damages. This exclusion of liability is not applicable as far as it is in contradiction with compulsory law.

16. Jurisdiction and applicable law

- 16.1. Exclusive place of jurisdiction shall be the place where the supplier's registered office is located.
- 16.2. The contract shall be governed by the Swiss substantive law.
The applicability of the United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980 („Vienna Convention“), is excluded.