

General Terms and Conditions of HAMMEL Rental & Financial Services

Version: 25/02/2019

1) General

- (1) All our tenders and agreements are based solely on the following general terms and conditions of trade. They will be regarded as acknowledged without reservation when an order is placed, the conclusion of a reservation agreement or at the latest by the acceptance of the delivery.
- (2) Conditional changes from the customer will only be binding if HAMMEL agrees to them expressly and in writing otherwise these will not become part of the contract, even if we supply the commodity with Knowledge of deviating or opposing conditions.
- (3) Verbal agreements will not become effective until we have confirmed them in writing.
- (4) HAMMEL assumes the agreement to screen, filter and classify electronic communication. Electronic communication classified as spam, (potential) malware or faulty transmission (which may compromise the integrity of the communication) will not be read and rejected, even without feedback from the sender. It is the responsibility of the sender to obtain confirmation of the correct receipt, if necessary. Furthermore, e-mails which are larger than 10 MB may be rejected. References to Dropbox are treated as potential malware. Executable files, as well as files containing dynamic content can also be rejected. Documents in PDF-A format are preferred. HAMMEL accepts tax-relevant documents (invoices and credit notes) electronically only via the email address rechnung@hammel.de in PDF-format. HAMMEL accepts the following documents only in written form: order confirmations and cancellations.

2) Tenders, Samples and Descriptions

- (1) Our tenders are always provisional and do not make us obligated to accept orders.
- (2) Supplies of tests and samples will only be valid as approximate and will not be binding. They are to be sent back to HAMMEL freight paid within a month of the shipment date or paid for.
- (3) Descriptions of our machines, their performance and their transport as well as drawings and plans only contain approximate information that justify no assured characteristics. Descriptions, drawings and plans will remain our property and may not be duplicated, made available to third parties or used for purposes other than order placement, without our written agreement. The use is returned to us upon request.
- (4) The customer has to guarantee that the manufacturing drawings presented by him do not violate the patent rights of third parties. We are not obliged to check on behalf of the customer whether the submission of tenders based upon the manufacturing drawings he submitted would violate the patent rights of third parties if they were to be realized. Nevertheless, should a liability occur on our side, the customer must reimburse our losses in cases of claim of recourse.

3) Confirmation of Orders

- (1) Orders will not be binding to us until they have been confirmed in writing.
- (2) We shall be entitled to pass on increases in costs occurring after the order has been confirmed, if the customer does not make the necessary communication for the implementation of the order.

4) Delivery

- (1) The delivery is the timely and proper fulfillment of all commitments ahead of the customer. The plea of an unfulfilled contract remains reserved.
- (2) We shall observe the delivery times given as far as possible; possible delayed deliveries or services will not obligate us to give compensation or a contractual penalty and will not justify any other commitments on our part. The customer will be entitled to withdraw from an agreement if HAMMEL has exceeded the delivery deadline by more than two months and the customer has given HAMMEL a reasonable extension of one month in writing.
- (3) The delivery period shall be set with the order confirmation, however not before the customer has submitted any documentation, authorizations or releases which may be required before receipt of an agreed down payment.
- (4) The delivery period shall have been met if, by the time of its expiry, the customer has been informed of readiness for delivery or the object of the delivery has left the works.
- (5) The delivery period shall be extended in the case of actions within the scope of labour disputes, in particular strikes and lockouts, and in the case of unforeseen difficulties which lie outside our power, e.g. breakdown, delays in the delivery of essential materials, or force majeure. The same shall apply if these circumstances occur at our suppliers or shippers. The delivery period shall be extended by a further period corresponding to the duration of such actions and difficulties. The mentioned circumstances shall not be our responsibility when they occur during an already existent delay. In significant cases, we shall inform the customer of the beginning and end of such difficulties as soon as possible.
- (6) Partial deliveries shall be permitted within the delivery periods stated by us, in as far as they do not cause disadvantages for their use.
- (7) In case of default of acceptance or other culpable breach of obligations to co-operate on the part of the customer, HAMMEL is entitled to compensation for the resulting damage, including any additional expenses. Further claims are reserved.

5) Transfer of risk / Transport

- (1) The risk of accidental loss or deterioration of the goods is transferred to the customer as soon as the goods are ready for collection. In principle, "ex works" shall apply in accordance with Incoterms 2010, unless otherwise expressly agreed upon in writing within the order confirmation. If the goods are ready for shipment and the shipment / collection is delayed through no fault of HAMMEL, the risk shall pass to the purchaser upon receipt of the notification of readiness for shipment.
- (2) We shall determine the type and means of transport according to our best assessment. If transport is delayed for any reason, we shall be able to store the goods ordered on our premises or with a third party to be determined by us at the cost and risk of the customer. We shall only be responsible for the selection of the third party.
- (3) Postage and packaging expenditures shall be invoiced separately. The packaging becomes the property of the customer and will be invoiced by us at our cost price, in as far as nothing else has been agreed in writing.
- (4) Our consignments and any returns will travel at the risk of the customer, even if they are transported and installed by HAMMEL employees.
- (5) The delivery shall be made from any warehouse in the sense of section 5 para. 2 at the risk of the customer, unless otherwise agreed upon.
- (6) Transport insurance will only be taken out at the request and cost of the customer.

6) Cancellation charges

- (1) If the purchaser withdraws from the order without authorization, HAMMEL can demand ten percent of the repurchase price for the costs incurred by the processing of the order and lost profit, without prejudice to the possibility of asserting a higher actual damage, unless otherwise agreed upon. The customer retains the right to provide evidence of minor damage.

7) Prices – Terms of Payment

- (1) In as far as nothing else has been agreed, our prices are stated in euros. All our prices are "ex works", excluding packaging which is invoiced separately.
- (2) Our prices are net prices; value added tax will be shown separately in the invoice at the legally applicable rate on the date of submission of invoice.
- (3) Our invoices are to be paid as follows without any deductions: For machines 30 % when the order is confirmed, 60 % at delivery or transport-ready. For spare parts and customer services: The total price without discount within 14 days from the date of the invoice, as far as nothing else has been agreed. If the customers do not pay on the due date, we are absolutely authorized to demand per month or part thereof 1 % of the outstanding payments. If we are in a position to prove a higher damage caused by default, we shall be entitled to assert this against the customer.
- (4) Payments in form of cheques or bills of exchange are not accepted. Whether the consignments of a cheque or a bill of exchange will affect a debt-exemption or a debt-deferment. The admissibility to take legal actions for compensation is excluded.
- (5) Our representatives and employees will be entitled to the receipt of payments of special letters of collection.
- (6) Circumstances that place the creditworthiness of the customer in doubt in our estimation will entitle us to the careful assertion of an invoice still outstanding without consideration of their dates of payment. Apart from this, we shall be entitled to demand advance payment or the deposit of security according to our choice, because of due claims from agreements based on former conditions, and to refuse fulfillment for our part until advance payment or a deposit of security.
- (7) Price changes shall be permitted if more than four months lie between conclusion of contract and agreed date of delivery. Should wages, material costs or market purchase prices increase between that time and completion of the delivery, we shall be entitled to increase the price reasonably in accordance with the increases.
- (8) The customer shall only be entitled to withdraw if the price increase substantially exceeds the general rise in the cost of living between the times of the order and the delivery. If the customer is a business person, a legal entity under public law or a separate asset under public law, then price changes shall be permitted according to the foregoing ruling if more than six weeks lie between conclusion of contract and the agreed date of delivery.
- (9) The deduction of a settlement discount shall require a specific written agreement.
- (10) The customer shall only have the right of compensation if his counter claims have been legally recognized or have been accepted by us. The customer shall have no right of retention on account of disputed counter claims.

8) Reservation of Proprietary Right

- (1) We reserve the ownership of our machines and machine parts until the complete payment of all deliveries that have already taken place and will be taking place in the future and other services. In the case of a running account, the reserved proprietary right will be regarded as a security of the balance.
- (2) The customer shall be obliged to treat the delivered goods with care. In particular, he shall be obliged to insure them adequately for their reinstatement value at his own cost against damage by fire, water or theft. The customer must perform the necessary maintenance and inspection work at his own expense and at the proper times.
- (3) The customer may not dispose of goods subject to reservation of ownership without our agreement. Should the customer sell on the delivered goods with our agreement, then he shall with that pass on to his buyer the claims arising therefrom together with all the subsidiary rights for securing our claims up to the value of the reserved goods. This transfer will also relate to claims against insurance companies. The same shall apply to claims of the

- (4) customer against the party causing the damage if the goods subject to reservation of ownership are damaged or destroyed.
- (5) The adaptation of our goods for us and their use will take place without binding us. In the case of use with other goods that do not belong to us by the customer, we shall become co-owners of the new object, at the proportion of the value of the reserved goods to the value of the other goods used at the time of use to be precise.
- (6) If the value of our protection of our claims rises by more than 20%, we shall release excess protection.
- (7) The customer must inform us immediately of distraint of property or other interventions by third parties so that we can file a lawsuit in accordance with paragraph 771 ZPO (German Code of Civil Procedure). Should the third party not be in a position to reimburse in and out of court costs such as a lawsuit, then the customer shall be liable for the extent of the resulting loss.
- (8) Should third parties attempt to obtain possession of the reserved goods, the customer must inform them that ownership belongs to HAMMEL. Should processing / mixing be such that the object of the customer is regarded as the main object, then it shall be taken as agreed that the customer shall look after the joint ownership for us.
- (9) We shall be entitled to take back the reserved goods if the customer acts contrary to the terms of the contract, particularly in the case of failure to pay on the due date. Taking back or distraint of the reserved goods shall not imply any withdrawal from the contract on our part, in as far as the consumer law is applicable.

9) Taking Back the Goods

- (1) If our claims are not fulfilled or are not fulfilled within the time limits named in sub-section 7, par. (3), we shall also be entitled to take back the goods supplied under reserved proprietary right, apart from the assertion of other rights to which we shall be entitled, without this being regarded as an exercise of the right to withdraw from the agreement. We shall be entitled to the same right if we become aware of circumstances that no longer allow an allocation of credit to be made in our opinion.
- (2) If we take goods back, 30% of the order price will be remunerated to us.

10) Warranty

- (1) All statements, such as construction values, dimensions, weights, diagrams, descriptions, calculations, assembly diagrams and drawings in books and other documentation do not provide any guarantee for the presence of a characteristic.
- (2) The customer must advise us without delay of any defects. Should the customer fail to provide within one week a written advice of defects which could have been found by a proper inspection of the goods, then he shall thereby lose his rights under warranty. The one week period shall begin with the day of delivery of the goods. Should the goods, in an exceptional case, not be delivered, then the period shall begin on the day of the transfer of the good. The broader obligations under paragraphs 377,378 HGB (German Commercial Code) shall remain unaffected.
- (3) In as far as the goods having a defect which is our fault, then we shall be entitled to rectify the defect or provide a replacement delivery at our choice. Should the rectification of the defect or replacement delivery fail, then the customer shall be entitled to demand rescission of sale (cancellation of contract) or abatement (appropriate reduction of the purchase price) at his choice. The fulfilment of the warranty takes place principally at our works in Bad Salzungen. If the customer requires warranty locally, transport costs, all travel expenses and accommodation cost will be charged to the customer.
- (4) Natural wear and tear shall be excluded from the warranty in every case.
- (5) Our guarantee has the pre-condition that the agreed payment conditions have been fulfilled punctually and that the other obligations of the customer have been fulfilled. In particular, the implementation of inspections (every 250 hours of operation) by our specialist personnel, according to the order of the customer, will be a pre-condition for receiving the guarantee.
- (6) After delivery of a machine, we guarantee correct material and appropriate installation for a duration of a maximum of 18 months or 2000 hours in operation within a one-shift system, depending on which comes first. The same is valid for spare parts as well as factory performance. For spare parts as well as for work performances applies a warranty of 12 months or 1000 hours of operation, depending on which comes first. If the installation of the delivery is delayed for reasons for which we are not responsible, the warranty period will expire 18 months after the despatch date ex works at the latest. The supply of spare parts and the carrying out of repairs without charge is included in the framework of the warranty. Travel, accommodation and despatch costs of fees and taxes associated with customs processing are not included in the warranty. If no other agreement has been made, the warranty shall not be liable for any deficiencies from the sale of used machines or machine parts.
- (7) If we so choose, the guarantee will pass to the replacement of a faulty part and replaced parts will become the property of HAMMEL – or to making good. We reserve the right to make several attempts to correct goods. The customer is responsible for sending defective parts back to us on request.
- (8) In so far as guarantee work is carried out by third parties with our written agreement, we are to be informed immediately, within 8 days of the settlement date of the work, whether the third party has not complied with its obligations or whether the customer has an intention to complain about its work. Claims against us will be excluded after this time limit has expired.
- (9) No liability will be accepted for supplied parts that are subject to premature wear and tear as a consequence of their material character or the way in which they are used, or for damage as a consequence of usual wear, straining, erroneous or negligent treatment, unsuitable means of operation, defective construction, or as a consequence of the influence of temperature, the weather, chemical or electrical influences or as a consequence of other influences of nature. Interventions by unauthorized third parties or accidents for which people themselves are to blame, neglect of servicing or maintenance, accountability during operation or other improper interventions will not be covered by our guarantee obligation.

11) Claims

- (1) Should the customer enforce claims for compensation, then liability shall be restricted to intent and gross negligence. Except in cases of willful breach of contract, we shall only be liable for foreseeable, typically occurring damage. The same limitation of liability shall apply in case of culpable and significant breach of contractual obligations on our part. This limitation of liability shall not begin in as far as damage to the life, body or health of the customer is caused by us.
- (2) Apart from that, liability for damages shall be excluded. In particular, we shall not be liable for damage that has not occurred to the object of the delivery itself.
- (3) Claims to compensation because of the consequences of defects, even in the wake of installation or making good, are excluded, even to the extent that they are attributable to the blame of agents of vicarious responsibility.
- (4) Any claim for damages, for whatever legal reason, is always limited to the maximum amount of € 1,000,000.00 per claim.
- (5) Should a third party purchase the machine as a final customer and assert claims against us for claims for damages, regardless of the legal reason, the customer already contracts us today out of any liability of the third party for damage to the goods, other (foreign) goods or lost profit with the exception of the damage we are responsible for in accordance with Section 11 para. (1) and (3).

12) Closing Terms

- (1) In the case of all disputes arising from the contractual relationship, the lawsuit shall be filed in the court of competent jurisdiction for our headquarters if the customer is a full business person, a legal entity under public law or a separate asset under public law. We shall also be entitled to file suit at the headquarters of the customer.
- (2) German law shall apply exclusively, with the exclusion of laws concerning the international purchase of movable property, even if the customer has his company headquarters in a foreign country.
- (3) The transfer of rights and obligations of the customer arising from the contract concluded with us shall require our written agreement in order to be effective.
- (4) Should a term be or become invalid, then the validity of the other terms shall remain unaffected.
- (5) With regards to content, obligatory and thus valid is only the German version. This English version serves primarily for purposes of understanding. Obligatory statements or a requirement on correctness are not contained in this translation.