



**General Terms and Conditions for Deliveries and Services
(valid for AUMUND Fördertechnik GmbH only, hereinafter "AUMUND")**

Valid: November 27th, 2019

I. Basic conditions

1. Definitions

1.1. These "General Terms and Conditions for Deliveries and Services" are hereinafter called "TERMS".

1.2. "VENDOR" in the sense of the TERMS is AUMUND Fördertechnik GmbH.

1.3. "DELIVERIES" in the sense of the TERMS are all deliveries and services - also including partial deliveries - of VENDOR to BUYER.

1.4. "CONTRACT" in the sense of the TERMS is the written agreement between BUYER and VENDOR, including all annexes and supplements in the written form as agreed hereto which refer to the contents and performance of the DELIVERIES.

1.5 "ACCEPTANCE" in the sense of the TERMS is a process in which the compliance of the DELIVERIES or a part thereof with the CONTRACT is bindingly determined for both parties.

1.6 "BUYER" in the sense of the TERMS is the company (or its legal successor) or the person (or its legal successor) that has placed the order to perform the DELIVERIES with VENDOR.

2. Quotation and Conclusion of Contract

2.1. All DELIVERIES are based on these TERMS, unless amended or supplemented by the quotation or the CONTRACT. Terms and conditions of purchase or general terms and conditions of BUYER which differ from these TERMS will not become an integral part of the CONTRACT, even if VENDOR accepts and/or performs the order without any reservations.

2.2. All VENDOR quotations are without engagement and not binding, unless explicitly marked as binding or if including a particular acceptance period. Verbal undertakings made by employees of VENDOR prior to the conclusion of the CONTRACT are not legally binding.

2.3. The legal relationship between VENDOR and BUYER is solely governed by the CONTRACT concluded in writing, including these TERMS. The CONTRACT reproduces in full all collateral agreements between the contractual parties relating to the contractual object.

2.4. In the absence of any other agreed term, the CONTRACT comes into force upon receipt of VENDOR's written order confirmation.

2.5. The VENDOR's written order confirmation is decisive for the type and scope of the DELIVERIES. If no explicit order confirmation has been issued, the quotation shall have decisive effect.

2.6. Amendments and supplements to the CONTRACT including these TERMS require the written form to become effective. To comply with the written form, transmission by telecommunication, especially by telefax or by email, is sufficient.



3. BUYER shall bear any costs for additional DELIVERIES which may become required due to local conditions, the joining of installation parts, orders, directives or regulations of public institutions issued after conclusion of the CONTRACT, or because the competent local authorities interpret the generally accepted rules of technology differently.
4. VENDOR reserves the right to carry out modifications and improvements related to construction, manufacture and design insofar as no substantial changes are made to the DELIVERIES and said changes can be accepted as reasonable by BUYER.
5. Should a documentation form part of the DELIVERIES whose preparation requires BUYER to participate, and should complete submission of said documentation not be possible at the date of acceptance or at the time of readiness for acceptance due to inadequate participation of the BUYER, this shall not be deemed to be a defect which justifies a refusal of acceptance.
6. Partial deliveries are permitted insofar as reasonable for the BUYER.
7. If BUYER requests changes to dispatch-related terms stipulated in the CONTRACT or - in the absence of a stipulation in the CONTRACT - to dispatch-related terms envisaged according to AUMUND standard, VENDOR reserves the right to reject the request due to unreasonableness and, in the event that VENDOR accepts the requests for changes, to charge an additional reimbursement.

II. Prices and Payments

1. In the absence of any special agreement, the prices shall be effective "ex works", excluding packaging and loading. If legally applicable, the value-added tax at the respective statutory rate shall be added to the prices.
2. In the absence of any special agreement, the payment shall be effected without any deduction into VENDOR's account as follows:
 - 30% down payment within seven calendar days subsequent to receipt of the order confirmation at BUYER's office
 - 40% within ten weeks after receipt of order confirmation at BUYER's office
 - residual amount within ten calendar days after notification of the readiness for dispatch or acceptance. This provision on maturity of the residual amount explicitly takes precedence over any other provisions on maturity in these TERMS.
3. Until payment of the purchase price owed pursuant to the CONTRACT, VENDOR has a right of retention to the DELIVERIES. This also applies to partial deliveries linked to particular partial payments.
4. BUYER shall only be entitled to withhold payments, if its counterclaims are undisputed or have been determined as legally effective.
5. The right to offset payment against counterclaims from other legal relationships is only available to BUYER to the extent that these are undisputed or have been determined as legally effective.



III. Delivery Time, Delivery Delay

1. The delivery time results from the agreements of the contractual parties. Its compliance by VENDOR presupposes that

a) all commercial and technical questions have been clarified between the contractual parties and

b) that BUYER has met all statutory or contractual obligations incumbent on it such as submission of the required official certificates or approvals and

c) BUYER has met its payment obligations from the CONTRACT.

If one of the aforementioned terms has not been fulfilled, the delivery time shall be extended appropriately. This shall not apply, if VENDOR is responsible for the non-fulfilment of the term. Further rights of VENDOR due to infringement of a contractual obligation by BUYER shall remain unaffected.

2. The obligation to compliance with the delivery time is subject to the correct and timely delivery by our suppliers. VENDOR shall notify BUYER as soon as possible of any delays which should emerge.

3. The delivery time is met, if VENDOR has carried out all activities related to the performance owed hereunder by the agreed date. Should a supply of work or service including assembly at the location of application be agreed, and should an ACCEPTANCE have to be performed in this connection - with the exception of a justified refusal of acceptance - the acceptance date shall be decisive for determining the compliance with the delivery time, even if BUYER is absent on this date for which it has been invited in time.

4. Should the failure to meet the delivery time be caused by force majeure, industrial conflicts or other events beyond VENDOR's control, the delivery time shall be appropriately extended. VENDOR shall notify BUYER of start and end of such circumstances at the earliest convenience.

5. Should the complete performance prior to the passage of the risk become definitely impossible for VENDOR, BUYER can withdraw from the CONTRACT without setting a deadline. Additionally, BUYER can withdraw from the CONTRACT, if performance of part of the DELIVERIES related to an order becomes impossible for VENDOR and BUYER has a justified interest in refusing the partial delivery. Should said circumstance not apply, BUYER shall pay the contractual price related to the partial delivery. In all other respects, sections VII.2 and 3 shall apply. Should the impossibility occur during BUYER's delay of acceptance, or should BUYER be solely or largely responsible for said circumstances, BUYER shall be obliged to provide compensation therefor.

6. Should VENDOR get into delay and should BUYER incur verifiable damages therefrom, BUYER shall be entitled to claim a lump sum as compensation for delay, beginning from the third week. Said compensation shall amount to 0.5% per each full week of delay, but no more than in total 5% of the value of that part of the entire delivery which cannot be used in time or according to the CONTRACT as a result of said delay. Further claims shall be explicitly excluded.



7. Should BUYER set a reasonable deadline for VENDOR to perform the service after maturity - in due consideration of the statutory cases of exemption - and should said deadline not be met, BUYER shall be entitled to withdrawal within the framework of the statutory regulations. BUYER shall undertake to declare on VENDOR's request during a reasonable period whether it will exercise said right of withdrawal. Further claims from delivery delay shall be based exclusively on sections VII.2 and 3 of these TERMS.

8. If and insofar as acts of cooperation related to the DELIVERY are owed by BUYER, said acts of cooperation shall be performed in such good time by BUYER that the DELIVERY can be realised at the agreed date. If no fixed delivery date has been agreed, BUYER shall be obliged to perform the acts of cooperation owed by BUYER immediately, as soon as VENDOR has notified BUYER of the readiness for dispatch. If the DELIVERY, for reasons for which BUYER is responsible, does not take place at the agreed date or otherwise within a reasonable period set by VENDOR after its notification of readiness for dispatch, VENDOR may at its own discretion dispatch the DELIVERIES or store them at BUYER's expense and risk.

9. If the DELIVERY is delayed for reasons, for which BUYER is responsible, BUYER shall, beginning one month after the agreed delivery date, bear the additional expense (e.g. storage costs) incurring as a result of the delay. For storage costs, VENDOR charges a lump-sum compensation of 0.5% of the invoice amount per each month. The right of assertion and the proof of further or inferior storage costs remain reserved. VENDOR shall be entitled to offset payments already received from BUYER against the claim for compensation caused by the acceptance delay (amongst other things due to the storage) pursuant to the aforementioned provisions in this section 9. This shall also apply, if payments of BUYER on the purchase price are concerned.

10. If BUYER does not or only incompletely fulfil the acts of cooperation owed within the frame of the DELIVERY, VENDOR shall, after setting and expiry of a grace period of 14 days, be entitled to withdraw from the not yet fulfilled part of the CONTRACT or to refuse its fulfilment and demand damage compensation.

IV. Passage of the risk

1. The risk for the DELIVERIES passes on to BUYER pursuant to the delivery terms agreed in the CONTRACT (such as EXW, FCA, FOB etc.). In addition, the risk shall pass on to BUYER, if BUYER is in default of acceptance.

2. VENDOR will only take out an insurance for DELIVERIES which, in spite of the passage of the risk, are still at storage at VENDOR's premises, if BUYER demands it and advances the costs related hereto.

V. Retention of Title

1. VENDOR retains the title to the delivered items until all of VENDOR's claims against BUYER from the CONTRACT have been paid.

This shall also apply, if individual or all of VENDOR's claims have been included into a current invoice and the balance has been drawn and accepted. In the event of payments by cheque or bill, the retention of title shall also cover the discharge of the bill accepted by VENDOR from BUYER, and shall not expire already on the crediting of the cheque received.



2. VENDOR shall be entitled, but not obliged, to arrange for the insurance of the supplied items against theft, breakage, fire, water and other damage at BUYER's expense. This shall not apply, if BUYER can furnish proof of haven taken out those insurances itself.

3. As long as the title has not been transferred, BUYER shall immediately notify VENDOR in writing, as soon as supplied items are seized or otherwise exposed to third party intervention.

4. Should BUYER act contrary to the CONTRACT, in particular in the event of delay in payment, VENDOR shall be entitled, after unsuccessful reminder and withdrawal from CONTRACT, to demand return of supplied items and BUYER shall be obliged to surrender the supplied items.

5. The petition for opening insolvency proceedings relating to BUYER's assets shall entitle VENDOR to withdraw from the CONTRACT and to demand the immediate surrender of supplied items.

6. BUYER shall be entitled to the resale of the supplied items in the normal course of business. BUYER herewith assigns already now to VENDOR its claims from the resale of the supplied items amounting to the final amount of invoice (including value-added tax) agreed with VENDOR.

VENDOR undertakes not to collect its claims as long as

- BUYER duly fulfils its payment obligations or
- authority to collect has not been revoked or
- no petition for opening insolvency proceedings relating to BUYER's assets has been filed.

7. Processing or reshaping of the supplied items shall always be carried out by BUYER for VENDOR. In this event, VENDOR's right of retention on the supplied items shall continue to be effective for the reshaped item. Should the item subject to retention of title be processed or combined with other items which do not belong to VENDOR, VENDOR shall acquire co-ownership of the new item in the ratio of the value of the item subject to retention of title to the other items at the time of processing or combination.

BUYER shall keep the property or joint property in safe custody for VENDOR.

VI. Warranty and Claims for Defects

VENDOR shall be liable for material defects and defects of title to the exclusion of further claims - subject to a different provision in section VII - as follows:

1. Material defects

1.1. VENDOR shall assume no liability in the following cases:



- Inappropriate or improper use, faulty assembly or commissioning by BUYER or third parties, natural wear and tear, erroneous or negligent handling, improper maintenance, unsuitable operating media, deficient construction work, unsuitable building site, chemical, electrochemical or electrical influences - unless VENDOR shall be responsible for such circumstances.
- Consumables and wear parts shall be excluded from any warranty.

1.2. Notwithstanding statutory mandatory warranty provisions and wilful or gross negligent acts, VENDOR shall not guarantee that the DELIVERIES are suitable for an intended purpose or conform to the requirements and stresses foreseen by BUYER, should BUYER data be outstanding, incomplete or wrong, unless such a suitability was expressly assured in writing.

1.3. BUYER shall carefully inspect DELIVERIES immediately after delivery to BUYER or to a third party appointed by BUYER or after collection. Said DELIVERIES shall be deemed as approved by BUYER with respect to obvious defects or other defects which would have been noticeable during an immediate, careful examination, unless VENDOR receives a written notice of defects within three calendar days after delivery. With respect to other defects, the DELIVERIES shall be deemed to have been approved by BUYER, if VENDOR does not receive the notice of defects within three calendar days after the time the defect has become obvious; if, during normal use, the defect had already been noticeable for the BUYER at an earlier time, this earlier time shall be decisive for the beginning of the period for giving notice of defects.

1.4. DELIVERIES which turn out to be inadequate due to a circumstance arising prior to the passage of the risk, shall, at VENDOR's discretion, be reworked by VENDOR or replaced by DELIVERIES free from defects. BUYER, after coordination with VENDOR, shall grant the required time and opportunity to carry out all rework and replacement deliveries deemed to be necessary by VENDOR; otherwise VENDOR shall be released from the liability for the consequences arising therefrom. Only in urgent cases where the operational safety is at risk, or to prevent disproportionately large damage, of which VENDOR must be notified immediately, BUYER shall be entitled to eliminate the defect itself, or have said defect eliminated by a third party, and to demand compensation for the required expenditure from VENDOR. Replaced defective parts shall become the property of VENDOR.

1.5. Insofar as the complaint turns out to be justified, VENDOR shall bear the direct costs of the rework or replacement delivery, including the shipping costs. VENDOR shall only be obliged to accept the costs of removal and installation as well as of any necessary provision of the required fitters and auxiliary staff including travel expenses, if VENDOR is responsible for the defect in the DELIVERIES and to the extent, as this takeover of costs is not an unreasonable burden imposed on VENDOR.

1.6. Irrespective of the legal grounds, the VENDOR's obligation to compensate for damages due to a defect of the DELIVERIES shall be limited to maximally 100% of the order value. Excepted from this is compensation for damages based on acts of wilful intent as well as liability pursuant to the Product Liability Act.



1.7. Within the framework of statutory regulations, BUYER has the right to withdraw from the CONTRACT, if - taking into account the statutory exceptions - VENDOR should fail to observe an appropriate grace period set for the rework or replacement delivery of a material defect. Should only a minor defect exist, BUYER shall only be entitled to reduce the contract price. In any and all other respects, the right to reduce the contract price shall be excluded.

1.8. Should BUYER or a third party carry out improper rework, VENDOR shall not be liable for the consequences arising therefrom. The same shall apply to all changes to the supplied items carried out without VENDOR's prior approval.

1.9. Further claims shall be based exclusively on sections VII. 2 and 3 of these TERMS.

2. Defects of title

2.1. If the use of the DELIVERIES at the place of application causes an infringement of industrial property rights or copyrights, VENDOR shall principally provide BUYER with the right to further use at VENDOR's expense, or modify the DELIVERIES in a way deemed reasonable for BUYER that the infringement of industrial property rights no longer exists. Should this be impossible under reasonable economic conditions or within a reasonable time period, BUYER shall be entitled to withdraw from the CONTRACT. Under the aforementioned conditions, VENDOR shall also have the right to withdraw from the CONTRACT.

Furthermore, VENDOR shall indemnify BUYER against undisputed or legally determined claims of the owners of the corresponding rights.

2.2. Subject to the provisions in sections VII.2 and 3, VENDOR's obligations mentioned in section VI. 2.1. are final with respect to property or copyright infringements.

They shall only apply, if

- BUYER notifies VENDOR immediately of asserted claims of industrial property or copyright infringements,
- BUYER supports VENDOR to a reasonable extent in defending against such asserted claims or enables VENDOR to carry out the modification measures according to section VI. 2.1,
- VENDOR retains the right to execute all measures for fending off, including out-of-court settlements,
- the defect of title is not attributable to an instruction issued by BUYER and
- the infringement of right did not arise from the fact that BUYER has modified the DELIVERIES without authorisation or used the same in a way that does not comply with the CONTRACT.



VII. Liability of VENDOR, Exclusion of Liability

1. Where, as a result of culpably omitted or faulty suggestions or consultations, either before or after conclusion of CONTRACT, or as a result of culpable infringements of other contractual additional obligations, in particular in case of erroneous operating and maintenance instructions for the supplied items, for which VENDOR is responsible, BUYER is unable to use the DELIVERIES in accordance with the CONTRACT, the provisions in sections VI and VII.2 and 3 shall apply with all further claims of BUYER being excluded.

2. For damages that have not occurred at the supplied items themselves, such as loss of production, loss of profit, damages of third parties, downtime costs, loss of use, loss of orders, increased operating, maintenance or personnel costs or indirect costs and/or consequential damage of whatever kind, VENDOR shall, for whatever legal reasons, be liable only

a. in the event of wilful intent

b. in the event of gross negligence on the part of legal representatives or executive employees

c. in the event of culpable injury to life, limb or health

d. in the event of defects which VENDOR maliciously concealed

e. in the event of defects in the supplied items to the extent liability exists under the Product Liability Act

f. in the event of absence of a guaranteed quality.

3. For damage to property and pecuniary losses caused by culpable breach of essential contractual obligations, VENDOR shall also be liable in the case of slight negligence on the part of its vicarious agents, however, limited to the reasonably foreseeable damage that is typical of the CONTRACT. Further claims shall be excluded. Essential contractual obligations are such, whose fulfilment characterises the CONTRACT and on whose accomplishment the BUYER may rely on.

VIII. Statute of Limitations

All claims on the part of BUYER, regardless of the legal grounds, shall come under the statute of limitations after 12 months from the commissioning, but maximally 18 months after delivery. For claims for damages according to sections VII. 2 a to e, however, the statutory time limits shall apply.

IX. Intellectual Property / Software

1. BUYER shall be obliged to treat as business secrets and keep in strict confidence any technical or economic information, know-how and other data from the domain of the VENDOR that BUYER may have received pre-contractually or during contract implementation and, accordingly, shall take appropriate measures to maintain secrecy pursuant to article 2 No. 1 b) of the German Act on the Protection of Business Secrets (GeschGehG). On request, BUYER shall be obliged to provide VENDOR with comprehensive information on the handling of VENDOR's business secrets.

2. VENDOR reserves the rights of ownership, rights of use and copyrights to all technical and economic information from its company which BUYER acquired pre-contractually or during contract implementation. BUYER does not receive any right to use the aforementioned information to duplicate or expand the DELIVERIES.'



3. BUYER may only use the aforementioned information to the extent as is absolutely necessary for it in order to prepare a quotation for its customers or to operate, maintain and service the supplied items or the installation into which the supplied items have been installed in accordance with the CONTRACT. In this connection, BUYER shall ensure that the VENDOR's need for confidentiality is appropriately respected in any case. On request, BUYER shall furnish VENDOR with written proof of the measures taken to this extent.

4. Should software be included in the scope of delivery, BUYER shall be granted a non-exclusive right to use the supplied software including the documentation pertaining thereto. Said software is provided for use on the supplied item for which it is intended. Use of the software on a further system shall be prohibited.

5. BUYER shall only be entitled to copy, revise, translate or convert the software supplied by VENDOR from object code into source code within the legally permissible scope. BUYER undertakes to refrain from removing manufacturer's information - in particular copyright notices - or from modifying them, without VENDOR's prior express consent. All other rights in the software and the documentation, including copies thereof, shall remain with VENDOR and/or the software supplier. The granting of sublicences shall not be permitted.

X. Severability Clause, Applicable Law, Place of Performance and Place of Jurisdiction

1. Should any of the provisions be or become ineffective or impracticable, the other provisions shall remain in full force and effect. The parties hereto undertake to replace the ineffective or impracticable provision by an effective provision which gets nearest to the content and economic purpose of the ineffective provision.

2. All legal relationships between VENDOR and BUYER shall be exclusively governed by the laws of the Federal Republic of Germany to the exclusion of the provisions of private international law (IPR) and the UN Convention on Contracts for the International Sale of Goods (CSIG).

3. The place of performance for DELIVERIES and payments (including cheques and bills of exchange) as well as place of jurisdiction for all disputes which may arise between VENDOR and BUYER from the CONTRACT is the place of VENDOR's head office in Rheinberg / Germany. VENDOR shall also be entitled to bring action against BUYER at BUYER's place of business.

Note.

VENDOR will handle all personal data of BUYER exclusively in compliance with the German Federal Data Protection Act and the EU GDPR.