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General terms and conditions of the Herrhammer GmbH Spezialmaschinen
(as of 08/2013)

I General

1. Subsidiary agreements and addenda require written confirmation from Herrhammer GmbH Spezialmaschinen.
2. The general terms and conditions of the buyer will be principally not accepted, even if these are not explicitly contradicted.
3. The Herrhammer GmbH Spezialmaschinen retains the proprietary rights and copy rights to any estimates, diagrams and other documents. These are not to be made available to a third party.
4. If contracts have been written in different languages with contradictory content, the following ranking applies to their reliability: a) German, b) English, c) all further languages.

II Offer

All rights are reserved on any offers made by the Herrhammer GmbH Spezialmaschinen unless they are explicitly made binding. Reproductions, diagrams and particulars pertaining to weight and measurement are only approximate, unless they have been denoted as exact.

III Scope of delivery

Authoritative for the scope of delivery is the written confirmation of order from Herrhammer GmbH Spezialmaschinen. If the Herrhammer GmbH Spezialmaschinen has made a binding offer with a temporary commitment and no written confirmation of order is present, the acceptance of the offer in due time is authoritative.

IV Prices and payment

The prices apply, as long as nothing to the contrary has been arranged, as ex works, not including packaging, loading and commissioning on site. The respective legal value added tax is added to the prices.

1. Unless an agreement has been reached to the contrary, payment is to be made in cash to the Herrhammer GmbH Spezialmaschinen paying office, excluding deductions and other costs. Payment is to be made prior to delivery.
2. Reserve of payments or offset against any counterclaims is only permissible when the buyer's counterclaim has been deemed undisputed or final and absolute.
3. If payments have been granted a respite or are paid later than agreed, the Herrhammer GmbH Spezialmaschinen is allowed to charge intermediary interest to the sum of 8 % over the base rate of the Deutsche Bundesbank.
4. Small orders are subject to the following surcharges:
€ 10.00 for orders from Germany with a total goods value below € 50.00
€ 18.00 for orders from abroad with a total goods value below € 250.00

V Time of delivery

1. The period of delivery begins with receipt of the confirmation of order; not, however before the buyer has fulfilled any existing duties to cooperate, particularly pertaining to the submission of any documents, approvals, releases still to be procured; or the receipt of any agreed down payments letters of credit. The delivery deadline is subject to a punctual delivery by our supplier.
2. The delivery deadline has been met, if at the point of expiry the subject of delivery has left the plant or readiness for dispatch has been shown.
3. If any failure to adhere to a delivery period is due to force majeure, industrial action, unforeseeable obstacles or other factors beyond the control of Herrhammer GmbH Spezialmaschinen, the delivery period adequately extends.
4. If damages occur to the buyer on account of a delay caused by the Herrhammer GmbH Spezialmaschinen, the buyer can claim compensation for delay. Compensation amounts to ½ % - for every full week as of the 4th week of delay - at the most however 5 % of the value of the subject that could not be used as agreed, as a result of the delay. A delay occurs when the Herrhammer GmbH Spezialmaschinen does not fulfil his duties after expiry of the delivery deadline and an adequate respite. Compensation for delay is not possible when a conventional sentence has been agreed upon in its stead, against which further claims have equally been barred.
5. The assertion of compensation or rescission for non-performance is not allowed, except under the circumstances stated in point V.3, unless the damages are deliberate or caused as a result of gross negligence.
6. If the buyer wishes the delivery to be delayed he will be invoiced for the storage costs as of the notification of delivery readiness. The Herrhammer GmbH Spezialmaschinen may, however, dispose of the subject of delivery after the lapse of an adequate time period; and deliver to the buyer within an adequately extended time period.

VI Passing of risk and acceptance

1. The risk passes over to the buyer, at the latest, upon dispatch of the subjects of delivery, even when a partial delivery takes place; or when the Herrhammer GmbH Spezialmaschinen takes over other services e.g. the costs of delivery or delivery and setup. At the request of the buyer, and at his cost, the delivery will be insured by the Herrhammer GmbH Spezialmaschinen against theft, breakage, transit damages, damages caused by fire and water and other such insurable risks.
2. The risk is transferred to the buyer as of the day of the readiness to deliver, if the delivery is delayed due to circumstances caused by the buyer; however Herrhammer GmbH Spezialmaschinen is bound, at the buyer's request and at his cost to effect insurance.
3. Delivered objects are to be accepted by the buyer, notwithstanding the rights stipulated in section VIII, even if flaws are visible.
4. Partial deliveries are admissible.

VII Reservation of ownership

1. The Herrhammer GmbH Spezialmaschinen reserves the ownership of the subject of delivery until all payments, resulting from the delivery contract have been made. The further sale of wares that have not been paid for is not allowed. Should the buyer nevertheless sell a product that has not been paid for to a third party, he then relinquishes the debt automatically unto Herrhammer GmbH. The third party is to be advised of his performance duties to the Herrhammer GmbH.
2. As far as Herrhammer GmbH is concerned, treatment takes place to the exclusion of the buyer's acquisition of property according to Section 950 of the German civil code (BGB), without obligating Herrhammer GmbH. Herrhammer GmbH governs the treated wares up to and including the billed value of the retained goods. If the buyer processes the wares with other wares, Herrhammer GmbH has the right to joint ownership of the new product in proportion retained goods' value to the invoice value of the other products used. Should the ownership of the Herrhammer GmbH lapse by means of association or combination, the buyer hereby transfers his proprietary rights on the subject or new holdings, to the invoiced value of the reserved items, to the Herrhammer GmbH. The buyer will store them free of charge for the Herrhammer GmbH.
3. If the buyer pays by cheque or by bill of exchange, the Herrhammer GmbH retains the proprietary rights on the subject of delivery until the buyer's liability, resulting from the cheque / bill of exchange - including claims on account of unjust enrichment resulting from the bill of exchange, has lapsed.
4. The Herrhammer GmbH is entitled to insure the subject of delivery against theft, breakage, fire, water or other damages, at the cost of the buyer, unless the buyer has already taken out insurance himself.
5. The buyer may neither pledge the subject of delivery nor assign as security. The Herrhammer GmbH is to be notified immediately if the subject has been pledged, confiscated or disposed of in any other fashion by a third party. The buyer bears the complete costs incurred by releasing the third party access to our reserved property and by recovering the subject, unless the costs can be collected from the third party.
6. In the event of the buyer acting in breach of contract, in particular in the event of arrears, the Herrhammer GmbH is, after adequate warning, entitled revoke the subject and the buyer is obliged to hand them over. The assertion of reservation of ownership or the pledge of the subject of delivery by the Herrhammer GmbH may not be regarded as the rescission of the contract, as long as the hire purchase act does not apply.

VIII Liability for faults in the delivery

Herrhammer GmbH can be held liable for faults in the delivery as follows:

1. Fault claims made by the buyer are statute-barred after expiration of 12 months after delivery.
2. Upon presenting a fault within the limitation period, the cause of which was present at the passing of risk, the buyer is entitled to demand either the fault to be remedied or the delivery of a flawless product as a subsequent performance. The Herrhammer GmbH is to be notified immediately in writing when faults are discovered. The Herrhammer GmbH can refuse the manner of subsequent performance chosen by the buyer, if the costs of carrying out the subsequent performance are disproportionate. The buyer's claim is then limited to the other manner of subsequent performance. The right of the Herrhammer GmbH to also refuse this manner of subsequent performance on the same grounds remains unaffected.
3. The Herrhammer GmbH bears the expenses - in particular the costs of transport, shipping, work and materials - necessary for the subsequent performance.
4. The Herrhammer GmbH has no obligation to subsequent performance until the buyer has paid a part of the remuneration that corresponds to the value of the insufficient service.
5. Warranty is excluded for damages caused by the following reasons: improper use; incorrect assembly or installation by the buyer or a third party; normal wear and tear; incorrect or negligent treatment; unsuitable equipment; replacement materials; faulty construction work; unsuitable foundation; chemical, electro-chemical or electrical affects, unless they are caused by the Herrhammer GmbH. The Herrhammer GmbH also can only be held liable for material faults if they are recognisable under due professional diligence.
6. If the buyer or a third party conducts any improper changes or maintenance work on the subject of delivery, the liability of Herrhammer GmbH for subsequent damages becomes inapplicable.
7. The buyer has to give Herrhammer GmbH, or a third party obligated to warranty, enough time and opportunity to carry out the subsequent performance. The right to remedy the defect alone or with the help of a third party, and to claim reimbursement of the necessary costs from the Herrhammer GmbH, is only permissible in urgent cases where operational safety has been endangered, or to not incur disproportionately larger damages. In such cases Herrhammer GmbH is to be notified immediately.
8. Replaced parts become the property of Herrhammer GmbH.
9. The liability of Herrhammer GmbH, in the case of substantially foreign products, is subsidiary in relation to the cession of liability claims, which Herrhammer GmbH would have been entitled to from his supplier. The buyer has to first of all have extrajudicial recourse to the third party.
10. Liability for defects on used machines is excluded.

IX Duty to cooperate

The buyer is obliged to examine the product immediately after delivery by the salesman. If faults or defects become apparent, they are to be made known to the salesman immediately. If this is not done, the product is regarded as approved, unless the fault was not apparent upon first inspection. If a fault or defect becomes apparent later on, notice is to be made immediately after the discovery, otherwise the products are regarded as approved, even with the fault.

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The customer grants Herrhammer GmbH Spezialmaschinen the right to inspect and test the goods within 14 days after arrival of the goods at the customer's premises in order to check and confirm that the machines conform to the contract.
Upon completion of the inspection the parties compile an acceptance certificate to confirm conformity with the contract or document any defect.

Further duties of the buyer to cooperate can be taken from the Herrhammer GmbH Spezialmaschinen terms and conditions for assembly work (as of August 2013).

X Termination of contract

Contracts are binding for all contracting parties. In certain cases Herrhammer GmbH Spezialmaschinen agrees to the customer's request for cancellation. Herrhammer GmbH Spezialmaschinen is entitled to the following compensation for cancellation:

1. 10 % of the agreed sales price including all ancillary services upon receipt of the order confirmation,
2. 30 % of the agreed sales price including all ancillary services 30 days after receipt of the order confirmation,
3. 40 % of the agreed sales price including all ancillary services upon start of the production of the corresponding machine plus the total sales price for customised options,
4. 100 % of the agreed sales price including all ancillary services plus the total sales price for customised options upon completion of the machine,

whereby all special constructions for the basic machine, the control, the machine options, power tools and services, but not commissioning, training, transport or packing are considered customised options.

The company Herrhammer GmbH Spezialmaschinen will inform the customer upon request about the start and completion of the machine production.

Upon request the company Herrhammer GmbH Spezialmaschinen delivers and transfers to the buyer parts, components and comparable devices for which the buyer has paid the total sales price for customised options.

The right to submit evidence of lesser or greater damages remains unaffected.

XI Contract rescission or reduction

If the subsequent performance fails, the buyer can rescind from the contract or reduce the sales price.

The subsequent performance has failed, when it is impossible, gravely or finally refused, unreasonably delayed or has been tried in vain.

The subsequent performance is considered abortive by the Herrhammer GmbH Spezialmaschinen after the second unsuccessful attempt.

Before rescinding, the buyer must principally have allowed the Herrhammer GmbH Spezialmaschinen in vain an adequate time period for service or subsequent performance.

Rescission is excluded in the case of outrageous neglect of duties.

The Herrhammer GmbH Spezialmaschinen guarantees the return of the payments made within a month of the rescission. All other claims against the Herrhammer GmbH Spezialmaschinen are limited to maximum 20 % of the contractual sum.

If it becomes known to the Herrhammer GmbH Spezialmaschinen, after conclusion of a contract, that the buyer has been unsuccessfully pledged or if the Herrhammer GmbH Spezialmaschinen obtains other indications pertaining to a financial collapse of the buyer, he is entitled to demand security for the service in return. Should this not succeed, Herrhammer GmbH Spezialmaschinen is entitled to rescind the contract, after taking into account all expenses made. The same applies should the buyer not fulfil his duties pertaining to payment and his secondary obligations, even upon demand. Moreover the Herrhammer GmbH Spezialmaschinen may demand payment of a contractual penalty to the amount of 10 % of the contractual sum, maximum, however, 25,000 €.

XII Liability

Claims for damages and replacement of futile expenses as defined by Section 284 of the German civil code (BGB) are excluded, unless they have been caused intentionally by, or by gross negligence of the Herrhammer GmbH Spezialmaschinen, his statutory representative or one of his vicarious agents; or a procurement risk on the part of the Herrhammer GmbH Spezialmaschinen.

The liability for damages to life and limb remain unaffected.

XIII Delivery of software also as part of machinery or systems

1. In compliance with the agreement, the delivery comprises of:
 - The programme saved on the respective data processing medium, when delivering programmes for programmable logic controllers (P.L.C.), and a commented listing
 - the programme in absolute code saved on the respective data processing medium, when delivering computer software; however no source programme in the form of a commented listing and other written material, as is necessary to ensure a satisfactory use of the machine or system, subsequently also named software.
2. Due to the current technical standards, it is not possible to create a computer and control software that works faultlessly in all applications and combinations. Therefore the delivered software is principally only to be used for the agreed machine functions; no guarantee is given for any use above and beyond that.
3. The liability of the Herrhammer GmbH Spezialmaschinen is stipulated in section VIII to X incl. of this contract; other damage claims are excluded.
4. The guarantee terminates when the buyer changes or extends the programme saved on the respective data processing medium.
5. The Herrhammer GmbH Spezialmaschinen does not own all rights to all programmes. An indefinite, non-transferable, non-exclusive right to use the software is guaranteed only for the machine or system stipulated in the contract.

The use of the software on machines delivered by another manufacturer or third party is only allowed after prior written agreement with the Herrhammer GmbH Spezialmaschinen has been made. A transfer of the guaranteed usufruct or the granting of a sublicense is not permissible.

6. The buyer does not have the right to make copies of the software. The Herrhammer GmbH Spezialmaschinen is prepared to give the buyer a copy of the programme saved on the data protection medium; further copies are available from Herrhammer GmbH Spezialmaschinen on request.
7. The buyer commits himself indefinitely to not make the software accessible to a third party. This includes of every kind of copy and any extended, changed, or processed versions. Third parties are not employees of the buyer or Herrhammer GmbH Spezialmaschinen, as long as they use the software according to contract for the buyer and do so on his premises.
8. All rights to the software, including all copies of the machine readable programme, created in whole or in part by clients, remain the property of Herrhammer GmbH Spezialmaschinen - irrespective of the buyer's ownership of the pictorial medium - .This also applies to software that has been changed or connected to other programmes.

The Herrhammer GmbH Spezialmaschinen accepts no liability for any loss of data and changes to data due to the faulty data protection media of the buyer, incorrect or improper use of the data protection media by the buyer or non-compatible data systems of the buyer or third party.

XIV Place of jurisdiction and legal statute

These terms and conditions as well as all present and future legal relations between Herrhammer GmbH Spezialmaschinen and the buyer are exclusively governed by German legislation.

The Uniform Law on the International Sale of Goods as well as the Vienna UNCITRAL convention do not apply, even if the buying entity is based abroad.

To the extent permitted by law, especially if the contracting parties are merchants, any present and future legal case between the parties arising directly or indirectly from the contract or other business and legal relations shall be heard in Würzburg.

XV Setup and start-up

Our separate conditions of assembly also apply to the setting up and starting up on the buyer's plant. The costs will be invoiced according to conditions of assembly applicable at the time of delivery.

XVI Repairs, modifications, overhauls and repurchase

1. If the machines are delivered in an unclean state, Herrhammer GmbH Spezialmaschinen reserves the right to invoice cleaning.
2. If the buyer does not demand the delivery of the parts needing replacement, by conclusion of contract, they will be disposed of.

XVII Prototype materials

The buyer bears the costs of the disposal or return of any prototype materials (waxes, paper board containers etc).

XVIII Ineffectiveness

Should one or more stipulation in these general terms and conditions, or within the scope of other agreements on the subject of this contract, be or become ineffective, the validity of the remaining stipulations remain unaffected. Any ineffective stipulation will then be replaced by the parties with another that fulfils the same regulatory purpose.

If the English version of the terms and conditions of Herrhammer GmbH Spezialmaschinen is inconsistent with the German original version, only the German terms and conditions are legally valid.

The customer hereby declares that he has read the terms and conditions of Herrhammer GmbH Spezialmaschinen and that he accepts their validity for all future business transactions.

date/ place / signature