

VEMAG ANLAGENBAU GMBH

General Terms and Conditions for the supply of machines, plant and spares (issue: January 2003)

I. Scope - quotations

1. These Terms and Conditions apply exclusively, unless otherwise agreed in writing. Conflicting or deviating terms and conditions of the purchaser shall not form part of this contract, even if we have not expressly contradicted them or have accepted delivery without complaint. 2. Our quotations are non-binding, unless otherwise expressly agreed in writing. The prices quoted by us are subject to change without notice. 3. The documents associated with the quotation, such as diagrams, drawings, dimensional and weight specifications are only approximate unless they are expressly designated as binding. We reserve title rights and copyright to cost estimates, drawings and other written documentation. 4. We reserve the right to modify the contractual items supplied where technically necessary and where no change disadvantageous to the purchaser occurs in terms of the prices, delivery times or functional and performance data of the contractual items supplied.

II. Scope of supplies and services

1. The written order confirmation/written order has sole relevance for the scope of our supplies and services. Subsidiary agreements and amendments of whatever kind, in particular additional supplies/services, require our written confirmation. This also applies to agreements and statements made by our staff or representatives. 2. We supply safety devices where this has been contractually agreed.

III. Price and payment

1. Our prices are net prices. They apply free on board ex works, but exclude packaging, unloading and insurance. Sales tax (VAT) will be charged at the prevailing statutory rate. 2. Payment should be made without deduction, unless otherwise contractually agreed, within 14 days of invoicing. 3. If calendar payment deadlines are exceeded, we will, by way of compensation, charge late-payment interest as from the due date at a rate of 8% above the base rate set by the German Discount Rate Transition Act effective October 1st 1999. Where payment is not fixed at a calendar date, interest will be payable to us following the first payment reminder, without our being required to allow any further period for payment to be made. 4. The purchaser has no right to withhold or offset payment unless the purchaser's counterclaim has been expressly acknowledged by ourselves or by legally binding judgement. 5. We will accept cheques or bills of exchange only for the purposes of fulfilment, on condition that the bills of exchange submitted can be discounted. Negotiation of bills of exchange precludes the granting of a cash discount. All the costs and charges associated with accepting bills of exchange will be borne by the purchaser. 6. Representatives, travelling salespeople and agents are not authorised to collect payment unless they have legally binding written authority to do so. 7. If payment in instalments has been agreed, in case of doubt they are due on the first of each month. If the purchaser remains in arrears with an instalment or part-sum corresponding to the amount of an instalment for longer than 10 working days, the entire outstanding purchase price will become due immediately. Interest will be applied from the day it is due as per item III 3. In this case we are entitled to demand the return of the contractual item for our security, without giving notice of withdrawal from the contract. We are not obliged to release the contractual item until the value of the delivery has been paid in full, together with any additional costs. All the costs associated with this will be borne by the purchaser. 8. If changes should occur in the economic status of the purchaser after the order confirmation has been dispatched which suggest that the purchaser's creditworthiness may be called into question, we are entitled to refuse further fulfilment until appropriate security has been provided. If the purchaser does not meet our demand for security within an appropriate period, we are entitled to withdraw from the contract. 9. The decisive bases for invoicing are the prices applicable at the time of delivery, unless other terms have been agreed in writing. 10. All the costs of approvals and permits and all public levies such as taxes, duties, stamp duty, inspection fees etc. will be borne by the purchaser.

IV. Delivery dates

1. The delivery dates we quote are not binding unless otherwise expressly agreed. 2. The delivery time is based on the agreements between the parties to the contract. Our compliance with the delivery date requires that all commercial and technical questions have been clarified between the parties and the purchaser has met all its obligations, such as presentation of the necessary official certificates or approvals, or provision of a payment on account. If this is not the case, the delivery time will be extended accordingly. This does not apply where responsibility for the delay lies with us. 3. The delivery date is considered met if the contractual item has left our works by the end of the relevant day or readiness for shipping has been notified. 4. If we delay delivery, the purchaser undertakes to give us a follow-up date which is appropriate to circumstances. Only once this follow-up date has been passed is the purchaser entitled to demand compensation for delay for each subsequent full week that passes in the amount of 0.2% of the value of the relevant contractual item, but no more than 5%. 5. Binding delivery times quoted will be extended if events of force majeure occur. Such events include in particular strikes of any kind, lockouts, late delivery to ourselves, equipment failure and similar. For the period that these events prevail, they relieve us of our obligation to deliver, though we do undertake to inform the purchaser in writing without delay if an event of force majeure under the terms of this provision occurs in respect of ourselves or one of our subcontractors. We will not be held responsible for the above described circumstances, even if they occur during an existing delay. 6. All other claims in connection with delayed delivery are subject to the stipulations stated under item X.

V. Transfer of risk and acceptance

1. The risk of accident, destruction or deterioration is transferred to the purchaser with delivery ex works, even if partial deliveries are being made or if we are still to perform other services such as payment of shipping costs, installation and commissioning. 2. If we take responsibility for installation and commissioning, the purchaser will make available at its expense adequate staff, raw materials and equipment as stipulated by the contract. If delivery, installation or commissioning is delayed for reasons for which the purchaser is responsible, the purchaser will bear the additional costs we incur as a result. The service rendered by us will be considered accepted no later than when the purchaser commences production with the machine or plant after it has been commissioned and function tested or, if the purchaser does not conduct negotiations relating to acceptance testing/handover with us, within eight working days of our requesting such acceptance in writing. The purchaser is not entitled to refuse acceptance on the basis of a minor defect. If we are delayed in installing and commissioning because advance works to be provided by the purchaser are not in place in time, we must be informed in writing 14 days before starting our planned work. If the purchaser fails to provide this information or provides it too late, the additional costs we incur as a result (e.g. storage costs) will be borne by the purchaser. 3. We are prepared to insure the contractual item against transport damage at the request and expense of the purchaser. 4. If shipping is delayed for reasons beyond our control, risk will be transferred to the purchaser at the time we notify readiness for shipping (shipping date). We are prepared to store and properly insure the contractual item at the request and expense of the purchaser. 5. Partial deliveries are permitted. The purchaser is obliged to accept partial deliveries.

VI. Retention of title

1. We retain title to the machines, plant or parts supplied until the purchase price has been paid in full. 2. We are entitled to insure the contractual item against fire, water and other damage at the expense of the purchaser, unless the purchaser has itself taken out and maintained such insurance cover. 3. The purchaser is not entitled to mortgage the contractual item or to assign it by way of security before full payment has been made. In the event of execution of lien, confiscation or other levy by third parties, the purchaser must inform us immediately in writing. 4. The purchaser is entitled to sell on, process, mix or combine and subsequently sell goods subject to extended retention of title provided such disposal is carried out within the bounds of correct and proper business practice. The purchaser may not transfer title to the goods subject to retention of title to its customer until our claim has been satisfied in full. 5. If we take back the sold item on grounds of retention of title, the purchaser is obliged to pay expenses and freight costs for its return. As reimbursement for lost profit, recompense for use and enjoyment and compensation for the reduced technical/mercantile value of the item sold, the purchaser must pay at least 20% of the purchase price, without prejudice to any further claims. 6. Petition to institute insolvency proceedings on the part of the purchaser entitles us to withdraw from the contract and to demand the immediate return of the contractual item. 7. Our intellectual property rights from patents, registered designs, copyright etc. are retained even after transfer of title to the goods.

VII. Claims relating to defects

A. We do not guarantee parts subject to wear. Replacement wearing parts will be supplied only against payment. B. Subject to item X, and excluding further claims, we will be liable for **material defects** in respect of the supply as follows:

1. All parts which, within 12 months of commissioning in single-shift operation (or within 6 months in double-shift operation), are verifiably unusable or materially impaired in use as a result of a circumstance occurring before the transfer of risk – in particular due to faulty design, poor materials or poor workmanship – will be supplied new or repaired at our reasonable discretion. Such defects must be notified to us immediately in writing. Replaced parts become our property. If shipping, installation or commissioning of the contractual item is delayed for reasons beyond our control, any liability on our part will expire no later than 12 months after transfer of risk. 2. For third-party products our liability is limited to assignment of the liability claims due to us against our supplier of the relevant third-party product, as long as the purchaser can be proven to be without fault to that extent. However, this is not the case if the liability of the relevant supplier of the third-party product does not lead to success or if the purchaser has tried in vain to levy against the supplier concerned. If this can be proven to be the case, our liability becomes effective again in accordance with the terms of this item. 3. No liability is accepted for loss arising from the following: a) unsuitable or incorrect use, defective installation and/or commissioning by the purchaser or a third party, natural wear and tear, incorrect or negligent handling (in particular excessive loading/stressing), incorrect maintenance, unsuitable equipment, defective construction work, unsuitable foundations, chemical, electrochemical or electrical effects insofar as they are not attributable to any fault of ours; b) if auxiliary or production materials, cleaning agents, coolants or other products are used which attack stainless steel and which, among other effects, alter pH values, temperatures or salt content in a way detrimental to our non-corrosive stainless steel products or sealing and joining materials which are safe for food use. 4. After consulting us, the purchaser has to allow us the necessary time and opportunity to undertake all the repairs and spares supplies we consider necessary at our reasonable discretion, otherwise we are relieved of any liability in respect of the consequences. Only in urgent cases of risk to operational safety, of which we are to be informed immediately, or if we are delayed in eliminating the defect, does the purchaser have the right to eliminate the defect itself or arrange for it to be eliminated by third parties and demand appropriate reimbursement of the costs incurred from us. 5. Of the direct costs arising from repair/supply of replacement, we will bear – insofar as the complaint is proved justified – the costs of the replacement item including shipping, the costs of dismantling and installation and the costs of secondment of our fitters and auxiliary staff who may be required, provided that this can reasonably be demanded depending on the individual case. The purchaser bears the costs of anything over and above this. 6. The same warranty is provided for the replacement item and the repair as for the contractual item. 7. We can refuse to eliminate defects as long as the purchaser fails to fulfil its obligations. 8. Any modifications or repair work carried out by the purchaser or third parties without our prior approval or in an improper manner will render our liability for the resulting consequences void.

9. The purchaser can withdraw from the contract if performance in full definitively becomes impossible for us before risk is transferred. The purchaser can also withdraw from the contract if, when identical types of item are ordered, fulfilment of one part of the supply becomes impossible in terms of quantity, and the purchaser has a justified interest in refusing partial delivery. If this is not the case, the purchaser can reduce payment accordingly. If the impossibility occurs during delay in acceptance or due to the fault of the purchaser, the purchaser remains obliged to make payment. 10. We have the right to withdraw from the contract in full or in part in case of unforeseen events under the terms of item IV. of the Terms and Conditions of supply, insofar as they materially alter the commercial significance or substance of the performance or have a material effect on our business, and in the event of our subsequently identifying impossibility of performance. 11. There can be no claims for compensation by the purchaser due to such withdrawal. If we wish to exercise the right of withdrawal, we must inform the purchaser of this as soon as the extent of the effect of the event becomes clear, even if an extension of the delivery period was initially agreed with the purchaser.

12. Under the terms of the legal provisions, the purchaser has the right to withdraw from the contract if we by our own fault – and taking account of legal cases of exception – fail to comply with an appropriate follow-up deadline set for the repair or supply of a replacement in connection with a material defect. The appropriate follow-up period will not begin until the defect has been acknowledged or proven. 13. If the defect is of minor significance, then the purchaser is only entitled to lower the contract price. Other claims are exclusively determined by item X. of these Terms and Conditions. All other, further-reaching claims from the purchaser are excluded, in particular with regard to cancellation, termination or reduction in price and in respect of compensation for loss of any kind, including loss not suffered by the contractual item itself.

X. Liability / limitation

1. In respect of loss suffered not by the contractual item itself, we will only be liable – on whatever legal grounds – a) in case of intent, b) in case of gross negligence of the owners/directors or senior executive staff, c) in case of tortious endangerment of life, limb or health, d) in case of defects which we fraudulently concealed or which we had guaranteed to be absent, e) in case of defects in the contractual item where we are liable in accordance with the Product Liability Act for personal injury or damage to property in relation to privately used objects. 2. In the event of tortious infringement of essential contract obligations we will also be liable for the gross negligence of non-executive staff and for minor negligence, in the latter case limited to loss which is typical to the contract and is reasonably foreseeable. Further claims are excluded. 3. All claims of the purchaser – on whatever legal grounds – will expire in 12 months. Claims for compensation in accordance with items X. 1a – e are subject to the statutory periods of limitation. 4. In concluding this contract, the ordering party undertakes strictly to observe the operating and maintenance instructions contained in the manual supplied. The ordering party shall be solely responsible for damage of whatever kind resulting from non-compliance with the instructions in the manual. To this extent, VEMAG Anlagenbau GmbH shall not be liable unless the ordering party can demonstrate that these particular instructions are incorrect or incomplete.

XI. Use of software

1. Where software is included in the supply, the purchaser is granted a non-exclusive right to use the supplied software including the associated documentation. The right is assigned for use on the designated contractual item. 2. The purchaser may reproduce, modify or translate the software, or convert from object code to source code, only to the extent permitted by law (Sections 69 ff. of the German Copyright Law - UrhG). 3. The purchaser undertakes not to remove manufacturers' markings – in particular copyright notices - or to modify such markings without the prior express consent of the vendor. All other rights to the software and the documentation, including copies of it, are reserved by us and by the software vendor as appropriate. The issue of subsidiary licences is not permitted.

XII. Applicable law, jurisdiction

1. All legal transactions between us and the purchaser are exclusively subject to the laws of the Federal Republic of Germany. The UN Conventions on the international sale of goods are not applicable. 2. All actions relating to disputes arising from the contractual relationship shall be submitted to the court having jurisdiction over our company's head office or the branch office performing the supply. We are also entitled to file suit at the location of the purchaser, however.