



Siempelkamp

Logistics & Service

TERMS AND CONDITIONS OF SALE

The following Terms and Conditions apply to any sale of products, drawings and any auxiliary services (hereinafter collectively "Products") by Siempelkamp Logistics & Service GmbH, Bad Kreuznach, Germany ("Siempelkamp").

1. OFFER AND ACCEPTANCE

Siempelkamp's quotation or proposal is a binding offer (unless stated as non-binding) by Siempelkamp to Purchaser. Purchaser's order and/or acceptance of the Products sold to Purchaser constitute an acceptance of Siempelkamp's offer (which - in case of modifications to the first offer - may also be called "order confirmation") including these Terms and Conditions. Any terms and conditions of Purchaser conflicting with or amending these Terms and Conditions shall not become part of the Contract even if not objected to by Siempelkamp. In case of supply of software, the Siempelkamp Plant Software License and the Siempelkamp process control software license will be part of the offer. The offer together with these Terms and Conditions, when accepted shall be the sole agreement between Siempelkamp and Purchaser, constituting the entire contract between them and superseding all previous agreements, representations, communications, either oral or written in relation to the offer and/or the Product. Any variation, amendment, cancellation or waiver of the offer and these Terms and Conditions and the contract resulting from them (the "Contract") and any acceptance of other terms and conditions is binding upon Siempelkamp only by a written acknowledgement signed by an authorized representative of Siempelkamp.

2. DELIVERY / FORCE MAJEURE

Delivery of the Products shall be ex manufacturer's works if not otherwise specified by Siempelkamp. Any delivery term including but not limited to ex works and F.O.B. shall be construed in accordance with INCOTERMS latest revision. Any dates indicated by Siempelkamp in relation to the Products are binding only if so expressly stated. If Siempelkamp is in delay of a binding delivery date for the Product due to its negligence, (i) Siempelkamp shall pay actual damages up to 0.5% of the price of the Product delayed per each full calendar week of delay, however, in total not exceeding 5% of that price, (ii) cancel the Contract with respect to the delayed Product or portion thereof, however, not prior to the expiration of the period for which the maximum amount of damages of 5% will become due and if Siempelkamp has failed to cure the delay within additional 14 days from Purchaser's written notice. In case of such cancellation, Siempelkamp shall refund to Purchaser all amounts which Purchaser may have already paid in advance for the portion of the Contract so cancelled.

Subject to the express remedies available to Purchaser according to these Terms and Conditions the foregoing remedies are Purchaser's sole remedies for any delay or non-fulfillment of Siempelkamp's obligations. Siempelkamp will not be liable for non-performance and/or delays of any obligation or time of performance caused by any event of force majeure such as labor dispute including a strike, slowdown or lockout, acts or regulations of public authorities, shortage of supplies, materials or shipping space, plant breakdown, power failure, delay or interruption of carriages, riot, accident, fire, flood, acts of God, or other causes not due to Siempelkamp's negligence.

3. INSPECTION

Within ten business days of delivery of the Products, Purchaser shall inspect the Products to check for conformity. Purchaser shall thereafter notify Siempelkamp in writing of any shortage, loss or damage and any other nonconformity within five business days of inspection. The failure to provide Siempelkamp with such notice within this time period shall constitute an unqualified acceptance of the Products and a waiver of all claims for any non-conformities, including a waiver of any right of revocation of acceptance.

4. TERMINATION

The Contract is not subject to termination for convenience by Purchaser unless Purchaser obtains specific written approval from Siempelkamp. If the Contract is terminated for convenience, Purchaser shall pay Siempelkamp reasonable termination charges, for expenses already incurred and commitments made by Siempelkamp in connection with the Contract and performance thereunder, including all of Siempelkamp's overheads and anticipated profit attributable to the Products.

5. WARRANTY

5.1 Siempelkamp warrants that the Products at the date of passing of risk meet the agreed specification and the state of the art in relation to design material and workmanship. This warranty extends only to the Purchaser, is non-transferable and does not cover normal wear and tear or damage caused by improper storage, use, installation, or maintenance, chemical influences or pollutants or any other events outside Siempelkamp's responsibility. In the event that the Products fail to meet this warranty and Purchaser has given written notice to Siempelkamp about the defect within a period of limitation of one year from the date of readiness for dispatch of the defective Product, as Purchaser's sole remedy, Siempelkamp will repair or replace, at its option, the defective part(s) free of charge to Purchaser provided that the Purchaser returns the Products to be replaced or repaired to Siempelkamp. Purchaser shall bear the costs of removal, shipment and reinstallation of the Products. Purchaser must allow Siempelkamp access and permission to inspect the Products at their site of installation.

Purchaser shall only be entitled to remedy the defect himself or by a third party and demand reimbursement of the reasonable costs incurred by the necessary remedial work (except for removal, shipment and reinstallation), if Siempelkamp fails to remedy the defect to the Product covered by the foregoing warranty within a reasonable time fixed by Purchaser by written notice to Siempelkamp.

Purchaser shall be entitled to cancel the Contract in case of a substantial defect to the Product covered by the foregoing warranty which cannot be remedied by Siempelkamp for reasons attributable to it, Purchaser or a third party. The cancellation shall become operative only with regard to that portion of supplies which cannot be used by the Purchaser as a result of the defect. In case of such cancellation Siempelkamp shall refund to Purchaser the portion of the price attributable to the cancelled part of the Contract against return of the defective Product.

5.2 THE FOREGOING REMEDIES ARE PURCHASER'S SOLE AND EXCLUSIVE REMEDIES IN CASE OF DEFECTIVE PRODUCTS AND THE WARRANTY OBLIGATIONS AND LIABILITIES OF SIEMPELKAMP, AND THE RIGHTS AND REMEDIES OF PURCHASER SET FORTH IN THIS PARAGRAPH 5 ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES, OBLIGATIONS, REPRESENTATIONS OR LIABILITIES, EXPRESS OR IMPLIED, ARISING BY LAW, IN CONTRACT, CIVIL LIABILITY OR TORT OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, FUNCTION OR ANY OTHER OBLIGATION OR LIABILITY ON THE PART OF SIEMPELKAMP TO ANYONE OF ANY NATURE WHATSOEVER.

6. PRICES

The price of the Products stated in Siempelkamp's offer is based upon costs and conditions existing on the date of quotation and is subject to change, until unqualified written acceptance of Siempelkamp's offer by Purchaser.

7. TAXES

Purchaser shall pay in addition to the price all local, state or federal sales, use, excise, privilege, occupational, personal property or other similar taxes, customs duties and any other fees or levies, if any in respect of the sale, delivery and provision of the Products. In the event any such taxes are paid by Siempelkamp, Purchaser will reimburse Siempelkamp therefor forthwith upon demand.

8. PAYMENT

Unless otherwise specified by Siempelkamp in writing, payment shall be made net cash fifteen days from the date of invoice at Siempelkamp's account. If Purchaser fails to fulfill the terms of payment or if Siempelkamp has any reasonable doubt at any time regarding Purchaser's financial ability, Siempelkamp may demand different terms of payment and/or decline to make further deliveries and may claim payment of all invoices, even if not yet due for payment. In the event Purchaser fails to make payment when due, Purchaser shall pay interest at a rate of one per cent (1%) per month on the amount of any unpaid payment. Purchaser shall pay, in addition to all other sums payable hereunder, the reasonable costs and expenses incurred by Siempelkamp in connection with all actions taken to collect outstanding payments or to preserve and protect its rights under the Contract, whether by legal proceedings or otherwise including without limitation reasonable attorneys' fees and court costs.



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Purchaser shall neither retain payment on account of any claim nor shall Purchaser offset any claim against the purchase price.

9. RESERVATION OF TITLE / SECURITY INTEREST

Siempelkamp shall retain title to the Products until it has received all payments due for the supply of the Products.

Purchaser shall at the request of Siempelkamp assist it in taking any measures necessary to protect Siempelkamp's title to the Products at their location after shipment.

Siempelkamp shall be entitled to insure the Products until transfer of title against theft, breakage, fire, water and other damage at Purchaser's cost, unless Purchaser has taken out the insurance policy himself.

Purchaser shall not sell or grant a lien on or pawn the Products or use it for security in any other manner. In case of seizure, lien, confiscation or other claims to the Products by a third party, Purchaser shall inform Siempelkamp immediately.

If Purchaser is in default with any of its obligations under the Contract, particularly by delayed payment and Purchaser has not cured the default within a reasonable time fixed by Siempelkamp's written notice, Siempelkamp shall be entitled to terminate the Contract and Purchaser shall return the Products to Siempelkamp.

Siempelkamp may terminate the Contract without any notice, and in such case Purchaser shall immediately return the Products to Siempelkamp, if Purchaser goes into liquidation, becomes bankrupt or makes a general assignment for the benefit of its creditors.

Any connection or combination of the Products with other items shall not affect the reservation of title to the Products. Otherwise Purchaser shall grant Siempelkamp co-ownership of the aggregate of the combination according to the proportionate value of the Products in relation to the value of the other items connected to, or combined with, the Products prevailing at the time the items were connected or combined. In such case Purchaser shall retain ownership or co-ownership as trustee for Purchaser, if required.

In case a reservation of title is not available, Siempelkamp reserves a first priority security interest in the Products until the purchase price therefor and any other sums payable hereunder is paid in full by Purchaser. Purchaser hereby grants Siempelkamp a power of attorney to execute any documents including financing statements relating to the Products, to protect Siempelkamp's security interest in the Products.

10. CONFIDENTIALITY

Purchaser hereby acknowledges that the Products including - without limitation - all specifications, drawings, descriptions and illustrations are confidential unless already in the public domain prior to its disclosure and are proprietary to Siempelkamp. Purchaser shall not disclose such information to anyone for any purpose other than for the use of the Products in its premises.

11. PURCHASER SPECIFICATIONS

Siempelkamp assumes no obligation to examine Purchaser's specification requests and other information and disclaims any liability arising directly or indirectly from any inaccuracies or omissions in such information.

12. PATENTS, INTELLECTUAL PROPERTY RIGHTS

The sale of the Products under the Contract shall not grant to Purchaser any right or license of any kind under any patent, utility model or copyright except for using the Products on a non-exclusive basis for its own premises.

In case the delivery of the Product by Siempelkamp to Purchaser constitutes an infringement of any patent, utility model or copyright for reasons others than described in para 3 herein below, Siempelkamp shall at its own expense at its option (i) defend or settle any such claim of which it is promptly notified and will pay all damages and costs awarded to Purchaser in any such infringement proceeding up to the price of the infringing Product, (ii) replace the Product by a non-infringing Product or (iii) take back the infringing Product against return of the price for such Product.

Use of the Product by the Purchaser constitutes an infringement of any patent utility model or copyright, and if such infringement is based on designs, specifications or instructions by Purchaser, the operation of equipment by Purchaser incorporating the Products or the application of a process by Purchaser while operating such equipment, Purchaser shall, at its own expense, defend or

settle any such claim of which it is promptly notified and will pay all damages and costs awarded against Siempelkamp in any such infringement proceeding.

13. INDEMNIFICATION

Siempelkamp agrees to defend, indemnify and hold harmless Purchaser with respect to claims for bodily injury, including death or damage to tangible property caused by (i) a defect in the Product making it unreasonably unsafe or (ii) the negligence of Siempelkamp, its officers and assigns.

Purchaser hereby agrees, at its own expense, to defend, indemnify and hold harmless Siempelkamp against any and all losses, costs, damages, claims, liabilities or expenses of any kind, including without limitation reasonable attorneys' fees, arising out of or resulting from, directly or indirectly, any injury or death to persons or damage to tangible property caused by (i) designs, specifications or instructions provided by Purchaser for the Products or (ii) the operation of equipment incorporating the Product or (iii) improper use, installation or maintenance of the Products or any use not contemplated in the Contract or contrary to the instructions for operation and maintenance of the Product issued by Siempelkamp or the manufacturer of the Product.

14. DISCLAIMER, LIMITATION OF LIABILITY

SAVE AS EXPRESSLY PROVIDED FOR IN CLAUSES 5, 12 AND 13 HEREINABOVE, SIEMPELKAMP SHALL NOT BE LIABLE FOR ANY CLAIMS, EXPENDITURES, LOSSES, THIRD PARTY CLAIMS, DAMAGES OF ANY KIND, INCLUDING DIRECT, INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL AND/OR PUNITIVE DAMAGES OF ANY KIND AND NATURE UNDER ANY CIRCUMSTANCES, LOSS OF USE, INCOME OR PROFIT, IRRESPECTIVE OF THE LEGAL REASON, ARISING DIRECTLY OR INDIRECTLY OUT OF OR OCCASIONED (i) BY THE SALE, DELIVERY, INSTALLATION USE, REPAIR OR REPLACEMENT OF THE PRODUCTS WHETHER SUCH DAMAGES ARE BASED ON A CLAIM OF BREACH OF EXPRESS OR IMPLIED WARRANTY, TORTUOUS CONDUCT INCLUDING NEGLIGENCE, STRICT LIABILITY OR ANY OTHER CAUSE OF ACTION, OR (ii) BY ANY OTHER BREACH OF ANY OBLIGATION AND/OR CONDITION OF THE CONTRACT OR OF THE LAW OR ANY REPRESENTATION WHETHER NEGLIGENT OR NOT.

IN NO EVENT SHALL SIEMPELKAMP'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE CONTRACT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT, INDEMNITY, OR OTHERWISE, EXCEED AN AMOUNT EQUAL TO THE NET CONTRACT PRICE. HOWEVER, THE AFOREMENTIONED LIMITATIONS OF LIABILITY SHALL NOT APPLY IF CAUSED BY SIEMPELKAMP'S WILFUL MISCONDUCT OR IN CASE OF PERSONAL INJURY OR DEATH.

15. SEVERABILITY, INVALIDITY

If any portion of the Contract shall for any reason be held by a court of competent jurisdiction to be invalid or unenforceable, the valid and enforceable provisions will continue to be given effect and bind the parties thereto. The invalid or unenforceable provision shall be replaced by a provision which comes closest to the invalid or unenforceable provision.

16. GOVERNING LAW, ARBITRATION, VENUE

The Contract and the relation between the parties for all purposes shall be construed and enforced in accordance with and governed by the substantive laws of Switzerland under exclusion of the UN-Convention on Contracts for the International Sale of Goods. All disputes out of or in connection with the Contract and the relation between the parties shall be exclusively and finally settled by arbitration according to the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed according to said Rules. Venue shall be Zurich, Switzerland.

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