

TERMS AND CONDITIONS OF SALE

The following Terms and Conditions apply to any sale of products, including spare and wear parts, drawings, installation services and any auxiliary services (hereinafter collectively "Products") by Siempelkamp Krantechnik GmbH, Moormerland, Germany ("Siempelkamp").

1. Offer and Acceptance

Siempelkamp's quotations or proposals are binding for a period of six weeks from the date of the quotation or proposal, unless otherwise specified in the quotation/proposal. Purchaser's order and/or acceptance of the Products sold to Purchaser constitute an acceptance of Siempelkamp's offer 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. 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 FOB 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 the Purchaser shall, with a period of grace of four weeks, be entitled to liquidated damages to the following amounts: 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. Purchaser shall be entitled to 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 of war or warlike acts, 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, pandemics, epidemics 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 unreserved acceptance of the Products and a waiver of all claims for any non-conformities at transfer of risk, including a waiver of any right of revocation of acceptance.

4. Service performances

- 4.1 When service performances, in particular installation performances, are included in Siempelkamp's scope of delivery and performances, the Purchaser must ensure that Siempelkamp has safe and suitable access to the place of performance whenever it needs it. If the Purchaser does not fulfil its obligations with regard to the scope of delivery and performances (e.g. installation requirements stated in the quotation) or if construction performances (including ceilings, walls, foundations and associated planning and construction work) or equipment not included in Siempelkamp's scope of delivery is not available at the place of performance, Siempelkamp shall be entitled to suspend the provision of service performances after having given appropriate written notice and stating the circumstances due to which the scope of delivery and performances is delayed, interrupted, impaired or obstructed.
- 4.2 Siempelkamp shall in no event be liable for the acts and/or omissions of other contractors or other persons provided or made available by the Purchaser or for performances rendered or equipment supplied by them. Siempelkamp shall also not be liable for their safety, the provision of safety equipment or safe work equipment or for their productivity or execution of their work. The Purchaser shall be solely liable for such persons or contractors not precisely complying with Siempelkamp's instructions and requirements. The Purchaser shall indemnify, defend and hold Siempelkamp harmless from and against all claims and liabilities arising in any way out of the acts or omissions of such persons or contractors for loss of or damage to property or personal injury to the extent that such loss or damage was not directly caused through Siempelkamp's fault.
- 4.3 The Purchaser is aware that the execution of the services by Siempelkamp may result in third parties who are performing other works on the construction site being hindered in the fulfilment of their orders. The Purchaser shall be responsible for the overall organisation of the construction site and shall bear the costs / risks of possible waiting times.

5. Termination

Except for good cause as set forth in Clause 2 and Clause 6.3, the Purchaser shall not be entitled to rescind or terminate the Contract unless Siempelkamp has consented in writing to such rescission or termination (termination for convenience). 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.

6. Warranty

6.1 Siempelkamp warrants that the Products (including accompanying software) at the date of passing of risk meet the agreed specification and the proven 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 works of Purchaser or third parties, 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 end of installation of the defective Product, however at the latest within a period of limitation of 18 (eighteen) months from readiness for delivery, 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. In the event of reinstallation Siempelkamp shall bear the costs for dismantling and reinstallation of the Products, provided the installation work was Siempelkamp's scope of supply and services under the Contract. Purchaser must allow Siempelkamp access and permission to inspect the Products at their site of installation. Defects in the software can also be rectified by providing an update program. A fresh warranty period of 12 months shall apply to replaced parts, starting with their installation. Any warranty, however, shall end 36 months after readiness for shipment of the original Product delivery at the latest.

6.2 Siempelkamp shall be responsible for the selection and deployment of suitable specialist personnel and the proper provision of the agreed installation services. Siempelkamp shall also be responsible for ensuring that its consulting services are provided to the best of its knowledge.

Siempelkamp shall be liable to the Purchaser for a warranty period of 6 (six) months commencing with the end of installation within the framework of its aforementioned responsibilities as follows:

Siempelkamp shall carry out installation work that has not been properly performed again within a reasonable period of time and provide the necessary replaced or repaired parts free of charge.

Siempelkamp shall be liable for all defects and damage culpably caused to the scope of delivery by its specialist personnel in such a way that Siempelkamp shall at its discretion either repair or replace the damaged or destroyed parts free of charge and shall provide its specialist personnel free of charge for the installation of the new delivery parts.

6.3 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, if Siempelkamp culpably fails to carry out the remedial works as set forth under Clause 6.1 and 6.2 within a reasonable time fixed by Purchaser by written notice to Siempelkamp. If, for reasons for which Siempelkamp is responsible, remedial works are not carried out by Siempelkamp and are finally impossible by the Purchaser or third parties, the Purchaser is entitled to rescind from the contract with regard to the products which cannot be used due to the defect and demand reimbursement of the contract price due for this against return of the defective products. Further claims and rights of the Purchaser in connection with defects and with regard to Siempelkamp's obligation to rectify defects are excluded.

6.4 Apart from the above warranty and the warranty according to section 15, Siempelkamp does not assume any further warranty, assurances or guarantees, in particular not the warranty for a specific or general fitness for use, durability and functions, unless expressly agreed in writing.

6.5 The warranty does not apply to damage caused by (i) normal wear and tear, (ii) unsuitable or improper use, (iii) changes not approved by Siempelkamp, in particular changes to the source code or program changes which go beyond the contractual parameterization, (iv) unauthorized repair work, (v) faulty assembly or commissioning by the Purchaser or a third party or (vi) disregard of the operating or maintenance instructions provided by Siempelkamp.

6.6 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 6 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.

7. The use of software

If software is included in the scope of delivery, the Purchaser shall be granted a non-exclusive right to use the delivered software along with its documentation. It shall be provided for use on the delivery item intended for this purpose. It is prohibited to use the software on more than one system and for more than one machine and for the purposes of third parties. Reverse engineering or other forms of conversion, (re)translation or revision is also prohibited.

The Purchaser shall undertake not to remove manufacturer's data – in particular copyright notices – or to change them without Siempelkamp's prior express consent.

All other rights to the software and the documentation, including copies, shall remain with Siempelkamp or the software supplier. The granting of sublicenses is not permitted.

The Purchaser is prohibited from making any changes to the source code or security-related programming. Should the Purchaser violate this obligation, any warranty shall immediately lapse and the Purchaser shall indemnify Siempelkamp against claims by third parties insofar as third parties assert claims against Siempelkamp on the basis of damage caused by the modification of the source code or safety-relevant programming.

8. 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. Any quoted price is a net price.

9. 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 and the provision of services. In the event any such taxes are paid by Siempelkamp, Purchaser will reimburse Siempelkamp therefor forthwith upon demand.

10. Payment

Unless otherwise specified by Siempelkamp in writing, payment shall be made net cash thirty 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. If progress payments have been agreed, all payment installments shall be due for payment no later than five months after Siempelkamp's notification of readiness for shipment, provided that the Purchaser is responsible for the delays in achieving the progress milestones.

In the event of late payment, statutory default interest shall be due on the sum of the payments not settled by the Purchaser. 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.

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

11. 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.

The Purchaser may not sell, pledge or assign the Products as security before full payment has been made. The Purchaser must notify Siempelkamp immediately in the event of seizure, confiscation or other dispositions by third parties.

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.

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.

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 or if Purchaser goes into liquidation, becomes bankrupt or makes a general assignment for the benefit of its creditors, Siempelkamp shall be entitled to terminate the Contract and Purchaser shall return the Products to Siempelkamp.

12. Confidentiality

The Purchaser hereby acknowledges that all specifications, drawings, descriptions and illustrations which are obtained from Siempelkamp are confidential and proprietary unless already in the public domain prior to its disclosure. The Purchaser shall not disclose such information to anyone for any purpose other than for the use of the Products in its premises. The Purchaser will keep such information confidential and will exercise a reasonable degree of care to prevent unauthorized access, use or distribution. The Purchaser will not use the information for so-called "reverse engineering".

13. 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.

14. Insurance

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

15. 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.

16. Liability of the Purchaser

Purchaser hereby agrees to indemnify and hold harmless Siempelkamp against any and all losses, costs, damages, claims, liabilities or expenses of any kind 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, (iii) improper use by Purchaser, or the Purchaser's improper 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.

17. Siempelkamp's liability and exclusion of liability

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, employees or a Siempelkamp vicarious agent acting in the execution of fulfilment.

Pure financial losses, such as loss of use, revenue or profits, damages due to loss of production or reduction in production, are expressly excluded from the damage typically to be expected under the contract. Siempelkamp is not liable for these or any other indirect or consequential damages.

The maximum liability of Siempelkamp arising out of or in connection with this Contract shall in aggregate be limited to the amount equal to the total contract price.

The aforementioned limitations or exclusions of liability shall not apply in the event of intentional or fraudulent acts/omissions on the part of Siempelkamp or in the event of personal injury or in other cases of mandatory 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.

18. Severability, Invalidity

If any provision of the Contract or these terms is or becomes void or invalid, this shall not affect the validity or effectiveness of the other provisions thereof. The void or invalid provision shall be replaced with an adequate valid provision, which comes closest to the economic meaning intended by the parties as inferred from the Contract in its entirety.

19. 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 express exclusion of (i) its conflict of laws rules and (ii) the UN-Convention on Contracts for the International Sale of Goods. Any and all claim, controversy or dispute arising out of or in connection with the Contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with the said Rules. The place of arbitration shall be Zurich, Switzerland. The language of the arbitration proceedings shall be English.

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