

# General Terms and Conditions

## I. General

1. All supplies and services are performed on the basis of these terms and conditions and any separate contractual agreements. Deviating purchase terms of the customer shall not become part of a contract even if an order is accepted. Quotations are subjects to confirmation. Unless otherwise agreed, a contract shall come about upon the written confirmation of order of JUMAG.
2. JUMAG reserves title and copyright to models, cost proposals, drawings and similar information of a physical and non-physical kind, including in electronic form; they may not be made accessible to third parties. JUMAG undertakes not to make information and documents designed as confidential by the customer accessible to third parties without the consent of the customer.

## II. Price and payment

1. Unless otherwise agreed, prices are ex works including loading in the works. Prices are subject to value-added tax at the applicable rate.
2. Unless otherwise agreed, payment shall be made without deduction to the account of JUMAG within 14 days. Payments are in time, when JUMAG can access the payment on the due date.
3. The customer shall only have the right to withhold payments or set payments off against counter-claims if these counter-claims are undisputed or have been declared final.

## III. Delivery period, delay in delivery

1. The delivery period derives from the agreements between the parties. Their observance by JUMAG presupposes that all commercial and technical issues between the parties hereto have been clarified and that the customer has satisfied all the obligations incumbent upon him, e.g. provision of the required certification or approvals or performance of an advance payment. If this is not the case, the delivery period shall be extended accordingly. This shall not apply if JUMAG is responsible for the delay.
2. Observance of the delivery date is subject to JUMAG obtaining timely and correct supplies. JUMAG will give notice of any imminent delays as soon as possible.
3. The delivery date shall have been observed if the object of delivery has left the works of JUMAG or readiness for dispatch has been notified by the time the delivery period has expired. If an acceptance inspection at JUMAGs facility is to be performed the acceptance date shall prevail - other than in the case of justified refusal to accept - and in the auxiliary notification of readiness for acceptance.
4. If dispatch or acceptance of the object of delivery are delayed for reasons within the control of the customer, he will be charged the costs arising as a result of the delay beginning one month after notification of the readiness for dispatch or acceptance.
5. If non-observance of the delivery period is the result of force majeure, labour disputes or other events lying outside the sphere of influence of JUMAG, the delivery period shall be extended accordingly. JUMAG will inform the customer as soon as possible of the commencement and end of such circumstances.
6. The customer may withdraw from the contract without notice if the entire performance becomes finally impossible for JUMAG before the passage of risk. The customer may furthermore withdraw from the contract if execution of a part of the delivery becomes impossible in the event of a purchase order and he has a justified interest in rejecting the part delivery. If this is not the case, the customer shall pay the contract price arising on the part delivery. The same shall apply in the case of the inability of JUMAG to perform. Otherwise Section VII.2 shall apply.

If the impossibility or inability to perform occurs during the delay in acceptance or if the customer is solely or largely responsible for these circumstances, he shall remain bound to effect counter-performance.

7. If the customer sets JUMAG a reasonable period of grace for performance after the due date, having consideration for the exceptions allowed by law, and this period of grace is not observed, the customer shall be entitled to withdraw within the scope of statutory regulations.

Further claims arising from default in delivery shall be determined solely according to Section VII.2 of these terms and conditions.

## IV. Passage of risk, acceptance

1. Unless otherwise agreed, the place of performance for deliveries of JUMAG shall be the registered office of JUMAG. If the customer requests shipment to another location, this shall be subject to a separate agreement and additional costs. The risk shall pass to the customer when the goods have left the works, even if partial deliveries are effected or JUMAG has undertaken additional performances, e.g. shipping costs or delivery and erection.
2. If dispatch or acceptance is delayed or suspended as a result of circumstances not imputable to JUMAG, the risk shall pass to the customer on the day of notification of readiness for dispatch or acceptance. JUMAG undertakes to contract the insurance policies requested by the customer and at his expense.
3. Part deliveries shall be permitted if this is conscionable for the customer.
4. If an acceptance inspection at JUMAGs facility is to take place, it must be performed immediately on the acceptance date, in the auxiliary after JUMAG has given notice of readiness for acceptance. The customer may not reject acceptance on account of a minor

## V. Reservation of title

1. JUMAG reserves title to the goods until complete payment of all claims under the contract. JUMAG shall be entitled to recover the goods if the customer is in breach of the contract.
2. As long as the title has not yet passed to the customer, he shall be obliged to treat the goods with due care. In particular, he shall be obliged to insure them sufficiently and at their replacement value against damage from theft, fire and water. As long as the title has not yet passed to the customer, he shall be obliged to promptly inform JUMAG in writing if the goods are attached or otherwise interfered with by third parties. To the extent that the third parties is not capable of reimbursing JUMAG for the costs – in court and out-of-court – of an action pursuant to § 771 ZPO (German Code of Civil Procedure), the customer shall be liable for the expenses incurred by JUMAG.
3. The customer shall be entitled to sell on the goods subject to retention of title in the ordinary course of business. Already at this point in time, the customer assigns to JUMAG the claims of the customer from the selling on of the goods subject to retention of title in the amount of the final invoice amount agreed with JUMAG (including value added tax); already now, JUMAG accepts this assignment. The assignment shall apply irrespective of whether the goods have been sold on without or after processing. The customer shall remain entitled to collect the claim also after the assignment. This shall not impair the authority of JUMAG to collect the claim itself. However, JUMAG undertakes not to collect the claim as long as the customer fulfils his payment obligations from the proceeds collected, is not in default of payment and, in particular, no insolvency proceedings have been instituted or payments have been suspended.
4. The modification and processing or transformation of the goods by the customer shall at all times occur on behalf and by order of JUMAG. In this case, the expectant right of the customer in respect of the goods shall continue to exist in respect of the transformed object. In the event that the goods are being processed together with other objects that are not the property of JUMAG, JUMAG shall acquire a co-ownership interest in the new object in accordance with the proportion of the objective value of the goods to the other objects processed at the time of the processing. The same shall also apply in the event of a commingling. In the event that the commingling occurs in such manner that the object of the customer is to be regarded as the principal component, it shall be deemed agreed that the customer transfers to JUMAG the proportionate co-ownership interest and stores the sole ownership or co-ownership interest that has come into existence in this manner on behalf of JUMAG. As collateral for the claims of JUMAG against the customer, the customer also assigns such claims to JUMAG which become vested in the customer against a third party from the connection of the goods subject to retention of title with real property; already now, JUMAG accepts this assignment.

## VI. Defects

JUMAG will be liable for material defects and deficiencies in title to the exclusion of further claims - subject to Section VII - as follows:

Material defects:

1. JUMAG will, at his option, improve or replace with perfect parts at no cost all those parts which prove to be deficient as a result of a circumstance existing before the passage of risk. The discovery of such defects must be notified to JUMAG in writing immediately. Replaced parts shall become the property of JUMAG.
2. The customer shall afford JUMAG the necessary time and opportunity by arrangement to effect all improvements and substitute deliveries which appear necessary to JUMAG; otherwise JUMAG shall be discharged of liability for the consequences arising therefrom. Only in urgent cases of danger to operational reliability or in order to avert disproportionately greater loss, in which case JUMAG must be notified immediately, shall the customer have the right to rectify the defect himself or through a third party and to demand recompense from JUMAG for the necessary expenses. Additional costs due to constricted access at the exchange of parts have to be absorbed by the customer .
3. Of the costs arising through improvement or substitute delivery, JUMAG will bear the costs of the replacement part, including the costs of shipping, if the complaint proves to be justified. JUMAG will also bear the costs of removal and installation and the costs of any provision of fitters and auxiliary workers that may be required, including their travel expenses, unless this represents a disproportionate burden on JUMAG. A disproportionate burden would be, if the product is installed at a difficult to reach place or if it is located outside of the Federal Republic of Germany. In this case the customer can only claim the delivery of spare parts.
4. The customer shall have the right to withdraw from the contract within the scope of statutory provisions if JUMAG, having consideration for the exceptions allowed by law, allows to lapse without result a reasonable period of grace set by the customer for the improvement or substitute delivery on account of a material defect. If the defect is only minor, the customer shall only have the right to a reduction in the contract price. The right to a reduction in the contract price shall otherwise remain excluded.

Further claims shall be governed by Section VII.2 of these terms and conditions.

5. No liability will be accepted in the following cases in particular:  
Unsuitable or improper use, deficient assembly or start-up by the customer through third parties, natural wear and tear, deficient or negligent treatment, inadequate maintenance, unsuitable operating resources, deficient construction work, unsuitable foundations and chemical, electrochemical or electrical influences, unless these are the responsibility of JUMAG.
6. The warranty for purchased components is according to the warranty regulations of the component producer. The rights of warranty of those parts are transferred to the customer. Additional claims to JUMAG are excluded.
7. If the customer or a third party effects improper improvement, JUMAG will not be liable for the consequences arising therefrom. The same shall apply for modifications to the object of delivery made without the prior consent of JUMAG.

#### Deficiencies in title

8. If use of the object of delivery leads to a breach of industrial property rights or copyrights in Germany, JUMAG shall at his expense procure for the customer the fundamental right of further use or modify the object of delivery in a conscionable way for the customer such that the breach of property rights no longer exists.

If this is not possible under reasonable financial conditions or in a reasonable period of time, the customer shall be entitled to withdraw from the contract. JUMAG shall be entitled to withdraw from the contract under the above conditions.

JUMAG shall also indemnify the customer against undisputed or legally final claims of the holders of the relevant property rights.

9. The obligations of JUMAG set out in Section VI.7 shall be conclusive for the case of a breach of property rights or copyright subject to Section VII.2.

#### They shall only exist if

- the customer informs JUMAG immediately of asserted breaches of property rights or copyright;
- the customer supports JUMAG to a reasonable extent in averting the asserted claims or enables JUMAG to perform modification measures in accordance with Section VI.7;

- JUMAG retains the right of all defensive measures, including the right to reach out-of-court settlements;
- the deficiency in title is not founded on an instruction of the customer; and
- the breach of rights was not caused because JUMAG changed the object of delivery independently or used it in a way other than provided for in the contract.

#### **VII. Liability**

1. If the object of delivery cannot be used by the customer according to contract as a result of the failure to execute or the deficient execution of suggestions and advice provided before and after conclusion of contract or through the breach of other secondary obligations under the contract - in particular instructions for the operation and maintenance of the object of delivery - the regulations of Sections VI and VII.2 shall apply analogously, to the exclusion of further claims of the customer.
2. JUMAG shall only be liable for losses not occasioned to the object of delivery itself, irrespective of the legal grounds,
  - a. in the case of intent;
  - b. in the case of gross negligence on the part of the proprietor / the institutions or managerial employees;
  - c. in the case of culpable loss of life, physical injury or damage to health;
  - d. in the case of defects which he maliciously failed to disclose or whose absence he guaranteed;
  - e. in the case of deficiencies in the object of delivery if liability arises under the product liability laws.

In the event of a culpable breach of substantive duties under the contract, JUMAG shall be liable even in the case of the gross negligence of non-managerial staff and in the case of slight negligence, in the latter case limited to the typical losses reasonably foreseeable under the contract.

Further claims are excluded.

#### **VIII. Limitation period**

All claims of the customer, regardless of their legal grounds, shall become time-barred in 12 months. The statutory periods shall apply for claims to compensation pursuant to Section VII. 2 a - e. They shall also apply for deficiencies of a structure or for objects of delivery which were used for a structure in accordance with their normal use and which caused the deficiency thereof.

#### **IX. Use of software**

If software is included in the scope of delivery, the customer is granted a non-exclusive right to use the supplied software including its documentation. It is transferred for use on the intended object of delivery. Utilisation of the software on more than one system is prohibited.

The customer may only duplicate, revise or translate the software or convert it from the object code into the source code to the extent allowed by law (§§ 69 a ff. German Copyright Act (UrhG)). The customer undertakes not to remove or to modify manufacturer's information, in particular copyright notices, without the prior express consent of JUMAG.

All other rights to the software and the documentation, including the copies, shall remain with JUMAG or the software supplier. The granting of sub-licences is not permitted.

#### **X. Applicable law, jurisdiction**

1. All legal relations between JUMAG and the customer shall be governed solely by the law of the Federal Republic of Germany prevailing for the legal relations between domestic parties.
2. The place of jurisdiction shall be the court competent for the registered office of JUMAG. However, JUMAG shall be entitled to take legal action at the principal place of business of the customer.

### **Jumag Dampferzeuger GmbH**

Subject to changes / July 2021

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