

## **Terms and Conditions of Sale and Delivery for Putzmeister Concrete Machines Private Limited (Last revised January 2008)**

### **I. Scope of Application**

1. The following terms and conditions apply to all deliveries and performances, regardless of whether the individual case is a sales contract or a contract for work and services or a contractual relationship of yet another nature.
2. Terms and conditions of purchasing or other terms and conditions of business of the client do not apply, even if the supplier has not expressly objected to said terms and conditions.

### **II. Conclusion of Contract, Modifications of Contract, Assignment of Rights**

1. The documents which are a part of the offer (e.g., photographs, drawings) as well as data about the extent of the delivery, appearance, performance, dimensions, weight, consumption of operating materials, operating costs, etc., are only approximate values unless they have expressly been designated as binding. The supplier retains rights of ownership and copyrights to cost estimates, drawings and other documents. They must not be made available to third parties and shall be returned upon request.
2. The contract shall be deemed concluded when the supplier has confirmed acceptance of the order in writing or has commenced delivery or performance. If the supplier has submitted an offer which is subject to a time limit, the contract shall be deemed concluded when the client has submitted written acceptance of the offer in due time.
3. Oral secondary agreements and amendments to the contract shall not become effective until the supplier has confirmed them in writing. Obvious spelling or calculation errors may be corrected retroactively.
4. The client may not assign his rights from this contract.

### **III. Prices**

1. The prices are given ex works, including loading in the works, but excluding packaging, plus applicable value-added tax in conformity with the applicable provisions of the delivery or performance country. To the extent that binding remuneration of the supplier has not been agreed, the supplier's prices in effect on the day of the delivery shall apply.
2. Engineer work, installation and commissioning will be billed separately. The billing may be calculated at either a flat rate or according to actual expenditure, plus travel costs, subsistence allowance and overnight expenses, overtime, surcharges for Sundays and public holidays.
3. Price changes are admissible if there has been a lapse of more than 3 months between conclusion of the contract and the agreed date of delivery. The supplier is entitled to adjust prices to the extent that the new price is in the same ratio to the agreed price as the price of the delivery and performance according to the valid price list on the day of the delivery is to the price of the delivery according to the valid price list on the day of the conclusion of the contract. With respect to other deliveries and performances not shown in a price list, the supplier is entitled to make a price adjustment which is reasonable in view of the circumstances.

4. If costs or charges are included in the prices and the former are raised following the conclusion of the contract, or if they become due additionally following conclusion of the contract, the supplier is entitled to bill the client for the additional amount.
5. If at the request of the client the supplier is prepared to make an exchange, the supplier is entitled to bill the incurred costs, no less, however, than the amount of the loss in value resulting from aging and use, plus 10.0% of the agreed price of the originally agreed object of the delivery, as compensation for the expenditures incurred by the supplier due to the exchange. The supplier may not demand the flat-rate cost compensation described in the above provision if the client proves that no, or only minor, damage or expenditure resulted for the supplier.

#### **IV. Payment, Default of Payment, Set-Off, Retention**

1. In the absence of deviating agreements, payment for the delivery of machines shall become due within 7 days of the delivery, for spare parts within 30 days and for services within 14 days of the invoice date without deductions.
2. Any and all outstanding receivables shall become due and payable immediately – even if an extension or other delay of payment has been granted – as soon as the client is more than 5 workdays in default of fulfilment, in whole or in part, of his obligations to the supplier or if circumstances arise which substantially reduce the creditworthiness of the client (e.g., deterioration of assets, suspension of payments, excess debt, objections to bills of exchange and cheques, filing of a petition for institution of bankruptcy proceedings or the institution or dismissal thereof). The supplier may in this case refuse further deliveries or performances and request the provision of reasonable security for his claims.
3. Payment by bill of exchange is subject to special agreement. Bills of exchange and cheques will only be accepted subject to redemption. The client shall bear collection and discount charges. No cash discount will be granted for payment by bill of exchange or in the event that there are overdue payments, even if such a discount has otherwise been agreed.
4. The client may offset supplier's claims solely against undisputed or non-appealable claims. The client has a right of retention only if his counter-claim is based on the same contractual relationship and is undisputed or non-appealable, or if the supplier has committed a gross violation of his obligations from the same contractual relationship. However, this provision is without prejudice for the right of the client to retain a reasonable part of the purchase price due to defects of the supplier's performance.
5. If the client is in default of payment, interest at a rate of 24% shall be paid on the supplier's claims. This provision is without prejudice for the supplier's claim for compensation for additional damage.
6. If the client suffers deterioration of assets in the meaning of No. IV.2., the supplier may withdraw from the contract. This provision is without prejudice for further statutory claims of the supplier, e.g., damage compensation. Damage compensation claims of the client are excluded.

#### **V. Delivery Time, Partial Performances, Delay of Acceptance**

1. Delivery and installation periods do not commence until the supplier and the client have reached agreement on all details of the performance and all terms and conditions of the transaction and the supplier has confirmed the order. Said periods shall be suspended as long as the client is in default of fulfillment of his contributory obligations from this contract (e.g., provision of documents, supply of materials, permits, releases) or of an agreed advance payment.
2. The delivery period shall be deemed as observed if the object of the delivery has left the works or if notification of readiness for shipping has been given before lapse of the period.
3. The delivery period shall be extended by a reasonable amount in the event of force majeure, strike, lock-out and other unusual circumstances without fault; this provision shall also apply if a pre-supplier is affected, to the extent that these circumstances can be shown to have an influence on the delivery period.
4. If the supplier's performance is delayed, he shall nevertheless not be in default of performance to the extent that the delay is caused by circumstances which he could not foresee and prevent when taking reasonable precautions and which he could not overcome by taking reasonable measures.
5. The supplier is entitled to withhold his performance as long as the client does not fulfil his obligations to the supplier from this or another contract or due to other legal reasons.
6. Partial performance is admissible to the extent that it is reasonable for the client. Such partial performances shall be deemed independent legal transactions which may be bill separately.
7. If the terms and conditions of payment are not observed, if the delivery is not accepted in due time or if the acceptance thereof is refused or if security which has been agreed or is due in accordance with No. IV.2. has not been provided, the supplier is entitled, following fruitless lapse of a reasonable extension, to withdraw from the contract and to claim damage compensation. The supplier may claim without further proof damage compensation from the client in the amount of 25.0% of the order total for mass produced products and 75.0% of the order total for custom produced products, to the extent that the client does not prove that no damage, or only minor damage, has resulted. This provision is without prejudice for a claim of greater damage upon substantiation.
8. If at the request of the client the dispatch is delayed, the supplier may bill either the storage and maintenance costs actually incurred or a flat rate in the amount of 1/2% of the invoice amount per month; the latter is, however, not permitted if the client proves that the supplier suffered no, or only minor, damage or incurred no, or only minor, expenditures. This provision has no effect on the client's payment obligations.

## **VI. Transfer of Risk, Shipping and Acceptance**

1. The risk shall pass to the client no later than the point in time of the dispatch of the object of the delivery. This provision shall also apply to partial performance, or if the supplier has agreed to bear the costs for shipping or installation, or if he performs the delivery himself. No liability is accepted for the most favourable freight charges or transport time.
2. If the delivery, the shipping or the acceptance of the object of the delivery is delayed by the client due to no fault of the supplier, all risks – including the risk of deterioration or loss of the object of the delivery as well as all risks resulting from the object itself – shall

pass to the client as of the notification of the readiness for shipping or notification of completion.

3. Upon written request, the consignment will be insured at the client's expense for the cover sum he requests.
4. The client is liable for any and all damage which he causes by his negligence during or before acceptance of the object of the delivery (e.g., sampling, any acceptance procedure to be performed, etc.).
5. Delivered objects shall be accepted by the client, even if they are defective, without prejudice for his rights.

### **VII. Complaint of Defects, Guarantee, Guarantee Period**

1. The client shall examine the object of the delivery immediately after receipt and lodge written complaint of any defects without delay. The client shall also examine the object of the delivery for defects before every commissioning, in particular regarding safety and suitability for use. During its use, the object of the delivery shall be monitored constantly with regard to safety and defects. If there are even slight reservations concerning the suitability for use or the slightest reservations concerning safety, the object must not be used or its operation must be shut down immediately. The supplier shall be given written notification immediately, specifying the reservations or the defect within the scope of a complaint of defects. The client shall allow the supplier the time and opportunity required to perform any and all remedies and replacement deliveries which the supplier regards as necessary. Otherwise, the supplier is released from liability for any consequences resulting therefrom.
2. If the supplier's performance is defective at the time of the transfer of risk, the supplier shall perform subsequently, at his discretion remedying the defect or delivering a defect-free object in exchange for the defective object delivered. Replaced parts become the property of the supplier. If subsequent performance regarding a defect for which the supplier is responsible is not possible, has finally failed, is unreasonable for the purchaser, or if the seller has refused both types of subsequent performance, or if a reasonable extension for subsequent performance granted to the supplier has fruitlessly lapsed, the client may at his discretion reduce the remuneration for the supplier or withdraw from the contract. If there is only an minor defect, however, the client has only the right to reduce the remuneration.
3. If the supplier has fraudulently concealed a defect or given a guarantee for the quality of the object, the statutory regulation shall apply.
4. Unauthorized remedy of defects by the client or third parties shall result in the loss of all claims due to defects on the supplier. The supplier will not bear the costs for the remedy of defects by the client or third parties without the express prior agreement of the supplier. This provision does not apply in urgent cases – especially when delay is not possible – in which the operating safety is endangered or in order to prevent unreasonably great damage. In such cases, the supplier shall be notified immediately and shall be obligated to reimburse only the necessary costs.
5. In particular, the supplier does not accept any guarantee or any warranty obligation for damage in the following cases: unsuitable or improper use, defective installation or commissioning by the client or third parties, natural wear and tear, defective or negligent

handling, improper maintenance, excessive load, unsuitable operating materials and replacement materials, poor work, unsuitable foundation, chemical, electro-technical/electronic or electric influences. This exclusion does not apply if the supplier is responsible for the damage in conformity with the more specific provision of the regulation in VIII. No. 5.

There shall also be no liability and warranty obligation for the supplier in particular for the following measures and actions taken by the client or third parties and the consequences thereof: improper remedy of defects, change of the object of the delivery without the prior agreement of the supplier, addition and insertion of parts, in particular of spare parts which do not come from the supplier or which the supplier has not expressly approved for insertion, and failure to follow the operating instructions.

6. The supplier does not grant any warranty for material provided by the client or acquired on the basis of specifications predetermined by the client or for designs predetermined by the client.
7. The supplier does not grant any warranty for possible material defects for the sale of used machines, devices or parts. The supplier does not guarantee any quality and points out that used machines and parts frequently do not have the same quality as newly manufactured machines and parts, also with respect to their ability to perform.
8. The client's claims for subsequent performance as well as his possible claims for damage compensation or reimbursement for expenditures due to defects shall be time-barred after one year following delivery of the goods for deliveries, after one year following conclusion of the installation for installations. If the acceptance of the object of the delivery or the acceptance of the delivery and performance is delayed due to no fault of the supplier, the guarantee shall expire no later than 12 months after readiness. An analogous provision applies to subsequent performance. If the supplier has fraudulently concealed the defect or has given a guarantee for the quality of the item, the statutory regulation shall apply to the time-barring of any claims on the part of the client based thereon. The statutory regulation shall also apply to the time-barring of any damage compensation claims of the client because of defects if the supplier is guilty of intention or gross negligence or if the damage compensation claim is based on an injury to life, body or health.
9. Any and all other further claims of the client are excluded, in particular for damage compensation, including compensation for damage which did not result on the object of the delivery itself. No. VIII.5. applies accordingly.

### **VIII. Withdrawal, Damage Compensation and Limitation of Actions**

1. The client may withdraw from the contract if the complete performance finally becomes impossible for the supplier before the transfer of risk. A claim by the client for damage compensation due to final impossibility of the performance is excluded unless the supplier is guilty of gross negligence. Any claim for damage compensation is limited to the damage foreseeable at the time of conclusion of the contract and resulting from the usual course of events and is limited in amount to a maximum of 5% of the contract sum. The client may also withdraw from the contract if, for an order of identical items, the delivery of a part of the ordered items in terms of quantity becomes impossible and the

client has a justified interest in refusing a partial delivery. If this is not the case, the client may reduce the counter-performance accordingly.

2. If the impossibility occurs during delay of acceptance or due to the fault of the client, the latter remains obligated to counter-performance.
3. The client may withdraw from the contract if the supplier is in default of his performance, to the extent that said performance is due, the client has previously set a reasonable extension without success, and the supplier is responsible for his non-performance. A claim by the client for damage compensation due to the supplier's default of performance is excluded unless the supplier is guilty of gross negligence. Any claim for damage compensation is limited to the damage foreseeable at the time of conclusion of the contract and resulting from the usual course of events and is limited in amount to ½% for each full week of delay, in total to a maximum of 5% of the value of that part of the total delivery which cannot be used in due time because of the delay.
4. The client's right to withdraw from the contract – beyond the cases regulated above in Nos. 1 and 3 – in accordance with statutory regulations in the event of a violation of obligations for which the supplier is responsible and which does not result from a defect remains unaffected.
5. Any and all other more extensive claims of the client, in particular for termination and for damage compensation, including claims for damage compensation in lieu of performance and claims for compensation of damage of any type, for any legal reason whatsoever, including the violation of pre-contractual and contractual obligations, for actions in tort committed during development, conclusion and performance of the contract as well as for damage which did not result on the object of the delivery itself, are excluded. This exclusion of liability does not apply if the supplier is guilty of gross negligence. Furthermore, this exclusion of liability does not apply in the event of culpable violation of the essential contractual obligations of the supplier. Furthermore, this exclusion of liability does not apply to any claim of the client for damage compensation based on an intentional or grossly negligent injury of life, body or health. Finally, this exclusion of liability does not apply in those cases in which liability is compulsory in accordance with the Product Liability Act for personal injury or material damage to privately used objects. If these cases result in the supplier's liability – or in deviation from the above provisions in other cases due to contractual or statutory basis for claim – said liability shall be limited to compensation for the foreseeable damage resulting from the usual course of events and which has been proven in each individual instance. However, this limitation of liability does not apply to any liability in accordance with the Product Liability Act due to defects of the object of the delivery for personal injury or for material damage to privately used objects. Furthermore, this limitation of liability does not apply if the supplier is guilty of intention or of gross negligence.
6. Damage compensation claims of the client on the supplier – whether due to the violation of pre-contractual or contractual obligations, to actions in tort committed during the development, conclusion and performance of the contract or due to other legal reasons – shall be time-barred no later than one year after the end of the year in which the claim arose and the client learned of the circumstances substantiating the claim and of the person of the debtor, or would have learned thereof without gross negligence. If the debtor is guilty of intention or gross negligence, the statutory regulation shall apply. Fur-

thermore, the statutory regulation shall apply to any damage compensation claim based on an intentional or grossly negligent injury of life, body or health. 7. The managing directors of the supplier and his employees are liable to the client for actions in tort committed during the development, conclusion and performance of the contract only in cases of intention and gross negligence. No. 6 above applies analogously to the time-barring of claims of the client on the managing directors of the supplier and his employees.

### **IX. Security**

1. The object of the delivery remains the property of the supplier until full payment of the agreed price and of all other claims, including future claims, from the business relationship with the client. If in the context of the payment of the purchase price the supplier becomes liable on the basis of bills of exchange, the retention of title does not lapse before all bills of exchange have been completely redeemed by the client.
2. The client assigns now to the supplier the claims arising from the further sale of the objects of the delivery in the amount of the value of the objects of the delivery and all secondary rights. The client is authorized to collect the claim. The authority of the supplier to collect the claim himself remains unaffected hereby.
3. The supplier obligates himself to release security at his discretion to the extent that the realizable value of his security exceeds the total of his claims from the business relationship by more than 10%.
4. As long as the client fulfils his obligations to the supplier, he is entitled to dispose of the object of the delivery in the course of orderly business and subject to retention of title, to the extent that the claims effectively pass to the supplier in accordance with No. 2. Extraordinary disposals such as pledges, transfer by way of security and any and every assignment are not permissible. The supplier shall be given written notification immediately of any attachment by third parties on the object of the delivery or assigned claims, in particular pledges.
5. During the period of the retention of title, the client is in principle entitled to possess and make use as intended of the object of the delivery. In the event of actions in breach of contract by the client – in particular if the client is in default of payment – as well as in the cases of No. IV.2., however, the supplier may repossess the object of the delivery and revoke the authorization to collection of the claims resulting from the further sale. The client is – under exclusion of rights of retention – obligated to surrender the object. The client shall bear any and all costs of the repossession and exploitation. The supplier is entitled to private sale. The client shall upon request immediately submit to the supplier a catalogue of the claims assigned in conformity with No. 2. as well as all additional information and documents necessary for exercise of the claims to which the supplier is entitled, and inform the debtors of the assignment.
6. The client shall maintain the object of the delivery in proper condition during the retention of title and allow the supplier or a workshop authorized by the supplier – with the exception of emergencies – to perform immediately all of the maintenance and repair work prescribed by the supplier.
7. In the case of automobile concrete pumps, the supplier shall have the right to possess the vehicle title for the duration of the retention of title.

8. The exercise of the retention of title and pledge of the object of the delivery by the supplier shall not be deemed withdrawal from the contract.
9. If the retention of title or the assignment is not effective according to the law of the country in which the goods are located, the security closest in nature to retention of title or assignment in this country shall be deemed as agreed. If a contribution of the client is required for this purpose, the client shall perform all legal actions necessary to establish and preserve such rights.

#### **X. Industrial Property Rights**

If the supplier is to perform according to drawings or models, samples, or using parts supplied by the client, the client shall warrant that industrial property rights of third parties are not infringed hereby. The client shall indemnify the supplier from any and all claims by third parties due to infringement of industrial property rights and shall compensate the supplier for any resulting damage and for his costs and expenditures. If the client is prohibited from manufacture or delivery by a third party on the basis of an industrial property right, the supplier is entitled to cease work without making a closer examination of the legal situation. In this case, the supplier may withdraw from the contract and demand compensation for his damage as well as his costs and expenditures.

#### **XI. Use of Software**

To the extent that software is included in the scope of the delivery, the client shall be granted a non-exclusive right to use the supplied software, including its documentation. It is released for use on the object of the delivery intended for this purpose. The use of the software on more than one system is prohibited.

The client may reproduce, rework or translate the software or convert from the object code into the source code only within the legally permissible scope (Sec. 69 a ff UrhG, *Copyright Act*). The client obligates himself not to remove manufacturer's information – in particular copyright notices – or to change them without the prior express permission of the supplier.

All other rights to the software and the documentation, including the copies, remains with the supplier or the software supplier. The granting of sub-licenses is not permissible.

#### **XII. Proper Law, Place of Performance, Jurisdiction**

1. Sole proper law is that of the Republic of India.
2. Place of performance is Goa or the Suppliers' warehouses or branch offices.
3. If the client is a merchant, a legal person under public law or a special fund under public law, the courts of Goa shall have jurisdiction for any and all disputes arising under this contractual relationship, including disputes regarding its creation and its effectiveness as well as for bill of exchange and cheque litigation. The supplier may apply to any other court which has jurisdiction according to statutory provisions.

4. If one of the provisions of these terms and conditions of sale and delivery is invalid, in whole or in part, the validity of the remaining provisions shall not be affected.

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