

TUMA PUMPENSYSTEME GmbH - TUMA PUMPING SYSTEMS
TERMS AND CONDITIONS OF SALE AND DELIVERY

1. General; scope of applicability

These terms and conditions of sale and delivery shall apply to all business relationships between Tuma Pumpensysteme and its clients who are companies. Unless expressly agreed in writing, any client's differing, conflicting or additional general terms and conditions shall not become part of the contract, even if Tuma Pumpensysteme has knowledge of such client's terms and conditions and does not expressly rule them out.

2. Offer; delivery; changes in construction and execution

2.1 Our offers are always non-binding and without obligation. A contract is only considered concluded once Tuma Pumpensysteme returns a written order confirmation. All and any information in catalogs or on the internet are non-binding and subject to change without notice. No measures, weights, pictures, drawings, and other information are binding unless expressly specified as binding. Clients shall acknowledge any provable and corrected errors in offers, order confirmations, and invoices.

2.2 All and any deliveries shall be ex works. Any costs and risks of transport for delivery shall be borne by the client. Partial deliveries shall be allowed. In case of default of acceptance, the goods shall be considered duly transferred, and Tuma Pumpensysteme may charge a reasonable storage fee. In case of default of acceptance, Tuma Pumpensysteme may choose to either insist on fulfillment of the contract or to cancel the contract after a reasonable period of grace. If Tuma Pumpensysteme chooses to cancel the contract, it shall be allowed to charge a penalty of up to 30% of the invoice total.

3.3 Unless a time deal according to Sect. 919, Austrian General Civil Code, has been expressly agreed, Tuma Pumpensysteme shall not guarantee delivery on time. In case of manufacturing faults or delivery problems, e.g. due to force majeure, traffic problems, strikes, lock-outs, power shortages, or lack of precursor materials, the time of delivery shall be extended accordingly. If it becomes impossible to deliver on time as originally agreed, Tuma Pumpensysteme shall inform the client without delay.

If the client belatedly requests any changes, the proposed time of delivery shall be extended accordingly.

2.4 If Tuma Pumpensysteme fails to deliver on time, the client may only cancel the contract after allowing a reasonable period of grace in writing after the time of delivery has passed. If Tuma Pumpensysteme fails to deliver within said period of grace, the client may cancel the contract.

Such cancellation of the contract shall only be valid in writing. If the client's cancellation of the contract is unjustified, Tuma Pumpensysteme shall have the right to insist on keeping the contract or charge a penalty of up to 30% of the invoice total.

2.5 If Tuma Pumpensysteme fails to deliver on time due to delays or non-performance, clients can only claim damages if such late delivery was intentional or due to gross negligence.

2.6 Any changes in construction or execution of ordered goods shall not entitle the client to cancel the contract or assert any claims unless such changes fundamentally affect the use of the ordered goods in a negative way.

3. Pricing

Unless expressly specified otherwise, the prices in our offers are net prices valid subject to final determination by written order confirmation. Prices are ex works and do not include any applicable VAT. Prices do not include any costs for delivery, assembly and installation. The clients shall be charged for packaging, freight charges, customs charges and other fees and charges at cost price plus VAT. Any transport costs shall be borne by the client.

4. Payment

4.1 Unless other payment conditions have been agreed in writing, invoices shall be payable within 30 days of the invoice date.

4.2 Payments shall be considered made on the day Tuma Pumpensysteme has the money at their disposal. In case of late payment, independent of whose fault it is, Tuma Pumpensysteme shall be entitled to charge interest of 12% over the applicable basic interest rate after the due date. In any case, Tuma Pumpensysteme shall be allowed to charge pre-trial costs, particularly reminder fees and lawyer's fees for asserting legal rights. This shall expressly not affect any further damages claims due to delays.

4.3 Tuma Pumpensysteme reserves its right to decide on accepting bills or checks on a case-by-case basis. Anyway, bills or checks shall only be accepted as payment and shall only be credited with the usual reservation.

4.4 Even in case of warranty or other claims against Tuma Pumpensysteme, clients shall not be allowed to hold back payments. Setting payments off against the invoice total shall only be allowed if Tuma Pumpensysteme agreed in writing or a valid and enforceable court judgment allows so. Payments without specification shall be deemed as made for the oldest invoice.

5. Retention of title

5.1 All delivered goods shall remain property of Tuma Pumpensysteme until all and any future outstandings resulting from this business relationship with the client have been paid. The client shall only be allowed to dispose of such goods within the scope of ordinary course of business, but not to dispose of them in any other way, particularly to pledge or assign them as security.

5.2 Tuma Pumpensysteme shall be informed of any seizures, executions or other third party interventions without delay, and shall be supported in asserting its property rights. The client shall bear all and any intervention costs.

5.3 If a client pays late or otherwise violates the contract, Tuma Pumpensysteme is allowed to claim possession of the delivered goods even without cancelling the contract. The current market value of any reclaimed goods shall be set off against the invoice total. Tuma Pumpensysteme shall be allowed to collect and take the goods from the client and enter the client's premises for this purpose. The client shall not claim trespass.

5.4 Tuma Pumpensysteme shall also retain title to any goods delivered under retention of title after the goods have been machined, processed and finished.

6. Warranty

6.1 The client shall always have to prove that a claimed defect already existed at the time of delivery. The stipulation of Sect. 924, Austrian General Civil Code, is expressly ruled out. (According to this stipulation, within the first six months after delivery, a defect shall be deemed as having already existed at the time of delivery.)

The client shall be obliged to examine the goods after delivery without delay. The client shall inform Tuma Pumpensysteme in writing of all and any defects found upon such examination, stating the type and scope of such defects. Tuma Pumpensysteme shall be informed of any latent defects in writing immediately after their discovery.

If Tuma Pumpensysteme is not notified of a defect, or not notified in due time, the goods shall be deemed approved. In this case, the client shall not have the right to assert any warranty claims or damages including consequential harm caused by a defect, and shall not have the right to rescind the contract on account of an error.

No warranty or other claims shall be asserted on the basis of information provided in catalogs, brochures, advertising folders and written and oral statements not included in the contract.

6.2 Unless otherwise expressly agreed, the period of warranty shall be twelve months and shall start from the date the goods are delivered to the client, independent of the date the client installed or started using the goods. This shall also apply to all delivered goods and services firmly attached to a building or to the ground.

For goods which Tuma Pumpensysteme purchases from third parties and does not machine, process or finish, warranty shall be restricted to the scope of warranty the supplier is liable to. Tuma Pumpensysteme shall be allowed to transfer its claims against the supplier to the client, and thus the client shall not assert any further warranty or damages claims against Tuma Pumpensysteme.

The client shall allow a reasonable period of at least 90 days for improvements or exchanges.

6.3 The original warranty period shall not be inhibited or interrupted by repairing, completing or exchanging delivered goods.

6.4 Warranty claims shall be fulfilled by improvement, exchange or price reduction as Tuma Pumpensysteme seems fit.

Any costs resulting from repairing defects (such as e.g. assembly and disassembly, installation, transport, disposal, travel expenses and time) shall be borne by the client. For warranty work carried out on the client's premises, the client shall provide the necessary manpower, lifting equipment, scaffoldings and incidentals etc. without consideration. Any items replaced by Tuma Pumpensysteme shall become property of Tuma Pumpensysteme. As a rule, a defective item shall be sent to the Vienna office for assessment at no charge, the client shall not have the right to request that Tuma Pumpensysteme work on site.

6.5 Clients failing to comply with the payment conditions cannot assert warranty claims. Similarly, clients cannot assert warranty claims if the client or a third party interfered with the delivered goods, e.g. opening the pump, unless Tuma Pumpensysteme expressly agreed to such action.

Any defects resulting from arrangement and assembly not effected by Tuma Pumpensysteme, inadequate installation, non-observance of installation requirements and conditions of use, overstraining of parts by using them above the performance limits set by Tuma Pumpensysteme, negligent or incorrect handling, and use of inappropriate materials shall be excluded from warranty. Similarly, any defects caused by material provided by the client shall also be excluded from warranty. Tuma Pumpensysteme shall not be liable for any damage caused by third party

actions, atmospheric discharges, overvoltage and chemical influences. Warranty shall not apply to the replacement of parts subject to natural wear and tear.

7. Liabilities for other legal reasons, damages

7.1 If Tuma Pumpensysteme is responsible for failing to deliver goods or services, the client shall have the right to cancel the contract, but not to claim damages.

7.2 Tuma Pumpensysteme shall not accept liability for violating accessory obligations of the contract, such as expert advice on the use and purpose of machines, unless such liability is stipulated by law.

7.3 Outside the scope of application of the Austrian Product Liability Act, Tuma Pumpensysteme's liability shall be restricted to intention or gross negligence, which the client shall have to prove.

Tuma Pumpensysteme shall not be held liable for slight negligence, replacement of consequential damage and financial losses, unrealized savings, interest losses and third party claims against the client. These liability limitations shall not apply if the client's body or health is damaged or his/her life is lost because of Tuma Pumpensysteme.

7.4 Any liability for material damage according to the Austrian Product Liability Act shall be ruled out. Any recourse claims a contractual partner or third party may assert against Tuma Pumpensysteme based on the title of "product liability" according to the Austrian Product Liability Act shall be ruled out unless the claimant proves that the failure was caused by or at least happened due to gross negligence within the sphere of Tuma Pumpensysteme.

8. Additional conditions for repairs

8.1 As the owner hands over the item to be repaired to Tuma Pumpensysteme, he/she shall accept the repair conditions detailed hereinafter.

8.1.1 If Tuma Pumpensysteme gets a repair order, it will provide the services it deems appropriate and invoice them based on the time and material used. This also applies to services and additional services that become obviously necessary only in the course of carrying out the repair order. It shall not be required to inform the client of such additional services.

8.1.2 The client shall bear the costs of preparing a repair offer or an assessment.

8.1.3 If no shipping conditions have been agreed, Tuma Pumpensysteme may ship repaired goods within 8 weeks of completion of repairs or written cost estimate and oral or written notice.

8.1.4 If the client reduces the scope of repairs proposed by Tuma Pumpensysteme, ha agrees to waive any warranty claims.

8.1.5 Tuma Pumpensysteme shall not be liable for any damage occurring in the course of repairs in spite of appropriate handling.

9. Protection of maps, plans and other documents; confidentiality

All and any maps, plans, sketches, cost estimates, drawings, brochures, catalogs, samples and other documents shall remain intellectual property of Tuma Pumpensysteme. Any use, particularly dissemination, copying, publication and provision including even copying parts shall be subject to express agreement by Tuma Pumpensysteme.

Tuma Pumpensysteme may request return of all and any documents as mentioned above. In any case, the contract fails to be concluded, all and any such documents shall be returned without delay and without further request.

In particular, it shall not be admissible to use drawings, plans, samples or sketches for other purposes, particularly for imitation.

The client shall be obliged to keep all the knowledge gained from the business relationship secret from any third parties.

10. Partial nullity

If part of these terms and conditions is or becomes null and void, the remaining terms, conditions, and stipulations shall remain valid, and the ineffective stipulation shall be replaced by a stipulation that is legally valid and comes as close as possible to the original economic purpose.

11. Place of delivery; jurisdiction; applicable law

The place of delivery shall be the headquarters of Tuma Pumpensysteme. The competent court in A-1010 Vienna shall be agreed as the only competent court for all and any disputes resulting from or in connection with this contract. Austrian law excluding reference provisions shall apply. The application of the United Nations UNCITRAL Agreement on International Trade Law shall be ruled out.

Vienna, March 1st, 2012