

CONDITIONS OF SALE, DELIVERY AND SERVICE

In the following Conditions “the Company” means Komori International (Europe) B.V. (also trading under the name Komori Europe) and “the Buyer” means any person, firm or company with whom the Company contracts for the supply of goods or services. Hereinafter “Contract” means any agreement between the Buyer and the Company for the sale and purchase of Goods made subject to these Conditions which has come into force following the acceptance of an order in accordance with Clause 2 or pursuant to any other written agreement between the parties for the supply of Goods by the Company to the Buyer which is expressed to be subject to or to incorporate these Conditions and “Goods” means any machinery, equipment, software and/or other items as detailed in any Order or any other written agreement, including any parts supplied to the Buyer and/or the performance of services. “Software” means computer programs distributed by the Company to the Buyer as standard products or individually developed or adapted for the use in, for the operation of, or for the control of goods, including any documentation provided for this purpose. “Incoterms” means the International Rules for the interpretation of trade terms published by the International Chamber of Commerce in the version applicable at the time of conclusion of the Contract.

1. OFFERS

Unless it has been explicitly stated in writing by the Company that an offer, estimate and/or quotation has been made as being binding, all offers, estimates and quotations made by or on behalf of the Company are non-binding and can be changed or withdrawn at the Company’s discretion, until an order from a prospective purchaser has been unconditionally accepted in writing by the Company.

In case an explicitly binding offer, estimate and/or quotation has been made, such offer, estimate and/or quotation will automatically become invalid after 30 days from the date thereof, unless stated otherwise in the offer, estimate and/or quotation.

2. ORDERS

When the Company receives an order for Goods from any prospective purchaser and such order is accepted by the Company respectively when a Contract is concluded in another way, then, unless specifically agreed otherwise by the Company in writing, these Conditions shall apply to the Contract to the exclusion of all other purported terms and conditions which the Buyer may seek to impose upon the Company whether in its documentation or otherwise. In the event of conflict between provisions of the Contract and these Conditions, the provisions of the Contract will prevail.

3. SOFTWARE

Unless otherwise agreed in the Contract, the Buyer is granted the non-transferable and non-exclusive right to use the Software in accordance with the contractual specifications, including any existing device- and Software certificates, at the agreed installation location of the Goods and/or as per the agreed number of workstations and/or users. If hardware is also supplied, use is only permitted on this hardware, unless otherwise agreed in the Contract. All other rights to the Software are retained by the Company. Unless otherwise agreed in the Contract, the Buyer is therefore not authorized to reproduce and/or modify the Software, to make it available to third parties and/or to use it on hardware of Machinery other than that defined in the Contract. The Buyer is responsible for complying with the Software specifications, in particular the conditions of use, as well as for obtaining any official authorizations and complying with any official conditions of approval.

4. SUSPENSION AND DISSOLVEMENT

Without prejudice to the Company's rights under these Conditions or under the law, the Company will at any event be entitled to suspend (further) performance or to dissolve any Contract concluded with the Buyer, in whole or in part, without notice or warning and without any compensation being due by the Company in each of the following events:

- i) Buyer has been declared bankrupt, suspended his payments (under court supervision or otherwise) or sought an arrangement with his creditors;
- ii) decease of the Buyer (when a private individual) and conditional acceptance of his estate by his heirs, or such Buyer having been placed under guardianship;
- iii) the Company has good reason to believe that Buyer is or will be unable to perform any of its obligations under the Contract as stipulated;
- iv) Buyer has failed to perform one or more of his obligations of the Contract or of any other agreement with the Company or any of its affiliates;
- v) any of Buyer's Goods and/or any of the Goods at his business premises has been seized;
- vi) Buyer has sold or discontinued his business (or any share therein) to which the respective Goods pertain or a change has occurred in the control of that business;
- vii) in case of Force Majeure as meant in clause 21 of these Conditions; and/or

- viii) any permits or licenses required for the performance of the Contract are withdrawn.

Any right of the Buyer to suspend performance is hereby excluded.

5. **PRICES**

- (a) Unless otherwise stated all offers, estimates and quotations exclude VAT and tariffs or other duties of any competent authority. Unless otherwise stated all quotations for complete machinery include delivery, installation and demonstration (in accordance with the Company's standards).
- (b) The effects of changes in cost price determining factors, such as wages, costs of transport, insurance, materials and/or foreign exchange rates, which occur after the date of a Contract, can be passed on the Buyer, also when such changes were likely to occur at the time of signing the Contract.

6. **RISK AND INSURANCE**

Whilst the ownership in the Goods will remain with the Company until the Buyer has fulfilled all of his obligations pursuant to the Contract (see clause 8 of these Conditions; Retention of title) the risk of the Goods will pass to the Buyer in accordance with the delivery term agreed upon as defined by Incoterms. For completeness' sake, the latter sentence also applies in the event that installation of the Goods forms part of the Contract. The Buyer shall, to the extent the Company is not obliged to procure insurance cover in accordance with the delivery term agreed upon as defined by Incoterms, arrange adequate insurance cover with an insurance company of first class repute until ownership in the Goods has passed to him. Details of such insurance cover shall be given by the Buyer to the Company if so requested and the Company's interest in the Goods shall be noted on the policy. Any direct payment under such an insurance policy to the Company shall only decrease the amount of the debt owed by the Buyer to the Company with the net amount thus received by the Company.

7. **DELIVERY**

- (a) Delivery shall be made in accordance with the delivery term agreed upon as defined by Incoterms.
- (b) Deliveries may at the Company's discretion be suspended, restricted or delayed if by reason of insufficient data or information supplied by the Buyer, by reason of Force Majeure meant in clause 21 of these Conditions or by reason of any other cause beyond the Company's control deliveries are prevented or hindered from being made within the Contract time.
- (c) No suspension, restriction or delay shall render the Company liable in damages or justify cancellation or refusal of the Goods by the Buyer.

- (d) Dates and periods quoted by the Company for performance, dispatch or delivery of Goods are estimates only and time shall not be of the essence of the Contract unless expressly so stipulated on the face of the Contract. No excess of such dates and periods shall i) lead to default (on the basis article 83 under a of Book 6 of the Dutch Civil Code) on the part of the Company and/or ii) render the Company liable in damages or justify cancellation or refusal of the Goods by the Buyer.
- (e) The Company is entitled to deliver the Goods in more than one consignment, and the Buyer is not allowed to refuse any or all of the consignments. Unless otherwise agreed in the Contract, delivery of Software will be provided in a machine-readable form. This is done either in the form of a delivery or handover of a physical data medium or by making it available in electronic form (e.g. as a download). The Company is entitled to supply the version current at the time of delivery.
- (f) The Buyer shall be responsible for the disposal in accordance with the law of all non-returnable packing- and transportation materials. Deposits for returnable packing and transportation materials shall be refunded only when they have been returned by the Buyer at his costs and without damage.

8. **PAYMENT**

- (a) Unless otherwise agreed in writing payment for the Goods shall be made as follows:
 - i) for machinery:
as per specific stipulation in the Contract;
 - ii) for the other goods:
within thirty (30) days from the date of invoicing;

and in any event effectively in the currency agreed upon and without any set-off, discount and/or suspension, to the Company's bank account, as specified in the Contract.
- (b) If the Buyer fails to pay within the term provided for in the preceding sub-section or in the terms otherwise agreed, all claims of the Company shall automatically become fully due and payable. The Company reserves the right to charge statutory interest (*wettelijke rente*) or statutory commercial interest (*wettelijke handelsrente*), depending on which applies, calculated according to applicable Dutch Law, on a day per day basis (interest on interest), such interest to be calculated from the date when payment is due until the date when the total amount due is received by the Company.
- (c) Pre-payments and partial payments shall be made by way of deposit and are non-returnable and shall without notice or announcement be forfeited by the

Buyer if he cancels his order or for whatever cause fails to complete the Contract and this shall be without prejudice to the Company's right to recover damages for breach of contract but in such a case an allowance shall first be made for the amount of the deposit.

- (d) The costs of all legal or other steps taken by the Company for the recovery of any overdue payments shall be the responsibility of the Buyer who shall reimburse the Company upon demand, with a minimum of fifteen percent of the total amount payable (including VAT).
- (e) Each payment by the Buyer shall firstly serve as settlement of any extrajudicial collection costs payable by the Buyer and of any court costs and shall next be set off against any interest payable by the Buyer, and next against the oldest outstanding claims, irrespective of any instructions to the contrary given by the Buyer.
- (f) The provisions of sub-sections (b), (c) (d) and (e) above shall survive any termination of the Contract.

9. **RETENTION OF TITLE AND OTHER SECURITY RIGHTS**

The Company will retain title to the Goods delivered and to be delivered to the Buyer until full payment of all purchase amounts has been received, as well as any amounts owed by the Buyer pertaining to work performed by the Company in connection with such purchase agreements and any claims pursuant to any attributable failure in the performance of such agreements on the part of the Buyer. Furthermore, the following conditions shall apply with respect to the retention of title and other security rights:

- i) The Buyer shall hold the Goods as bailee and shall keep them in such a way that they are separate from his property and identified clearly as the property of the Company. The Buyer shall not be permitted to sell or otherwise put the Goods at the disposal of third parties, to mortgage or lien the Goods or to attach them permanently to his premises or give them otherwise an immovable character.
- ii) If the Buyer shall cause or permit the mixing of the Goods with other goods or materials ("the Mixed Goods") (whether supplied by the Company or not) so that the other goods or materials can no longer be identified, the Goods supplied by the Company will be deemed to be the principal items ("*hoofdzaak*") within the meaning of Articles 14 - 16 of Book 5 of the Dutch Civil Code. Consequently, the property in the Mixed Goods shall pass to the Company and the Buyer shall hold the same as bailee until performance as stipulated.
- iii) If during the course of manufacturing or other process the Goods shall become a part of any new product, material or thing (the "New Product"), the Goods supplied by the Company will be deemed to be the principal items

("hoofdzaak") within the meaning of Articles 14 - 16 of Book 5 of the Dutch Civil Code. Consequently, the ownership of the New Product shall pass to the Company and the Buyer shall hold the same as bailee until performance as stipulated. This sub-clause shall apply to any New Product whether completed or not.

- iv) The Company is irrevocably authorized by the Buyer to enter upon any premises where the Goods or any Mixed Goods or New Products are situated and take possession of and remove such goods at the Buyer's expense where the Buyer has not fulfilled fully all of his obligations pursuant to the Contract and further in any of the events mentioned in clause 4 above, without any notice or court injunction being required and without prejudice to the rights set out in clause 4 above.
- v) When the Company exercises its rights as per the previous sub-clause then this will not cause the Contract to be terminated, nor does the Company have any obligations to refund or otherwise compensate any amount received pursuant to the Contract. For such amounts the provisions of clause 8 sub (c) of these Conditions shall apply equally. The Company's exercise of such rights shall not prejudice any of its rights and remedies for breach of contract by the Buyer. Any costs with respect to the Company retrieving its goods or any Mixed Goods or New Products under this clause (including but not limited to disassembly and transport) will be borne by the Buyer.
- vi) If the retention of title is not, or not in all circumstances, enforceable in the country of installation of the Goods then the Company is entitled to do whatever it shall deem required for establishing and maintaining any other right (including but not limited to a mortgage or pledge) to safeguard its position as unpaid supplier of Goods. The Buyer shall cooperate in every respect thereto at his own costs.
- vii) If the value of the Goods taken back by the Company must be determined, the valuation shall be carried out by an expert to be designated by the Company. Such valuation shall take into account the price at which, on the day of retrieval, the Company can acquire new goods of the same nature as the retrieved goods; taking the price referred to as a basis, the valuation shall also take into account the decrease in value resulting from use, damage, aging and the decrease in merchantability of the retrieved goods, for whatever reason. To determine the decrease in merchantability, the valuation shall also take into account the costs of an overall technical inspection to be incurred by the Company in the event of a possible resale.
- viii) If the Company has reasonable cause to fear that the Buyer will not fulfill its obligations promptly, the Buyer shall be obliged, on the Company's first demand, to establish satisfactory security forthwith in such form as demanded by the Company, and, if required, to supplement such security, for the fulfillment of all of its obligations. As long as the Buyer fails to meet

such demand, the Company shall be entitled to suspend the fulfillment of his obligations.

- ix) As security for all that which the Company claims or will claim from the Buyer at any time, the Buyer hereby pledges to the Company who accepts this pledge, all goods of which the Buyer will become the (co-)owner as a result of specification (“*zaaksvorming*”), accession (“*natrekking*”) or confusion (“*vermenging*”) with the Goods delivered and/or to be delivered by the Company.

10. **STORAGE**

If after the Buyer is notified that the Goods are due and ready for collection or delivery the Buyer for whatever reason or cause does not make arrangements for the collection of the Goods or is not able or refuses to take delivery, the Company shall be entitled to arrange storage either at its premises or elsewhere and the Buyer shall be responsible for all reasonable storage charges including the cost of insurance and for all demurrage and similar charges due to the conveyor of the Goods and for all damages to the Goods occurred during such storage.

11. **SPECIFICATIONS**

- (a) Any drawings, particulars of weights and measurements, performance, power consumption, floor plans etc. provided at the conclusion of the Contract or otherwise (as mentioned in the Contract, catalogues, pictures, drawings, standardization leaflets, manuals etc.) shall be regarded as approximate and are intended to present a general idea of the Goods described. None of these form part of the Contract unless so specified, nor does the Company represent that they are true, accurate and complete in all respects and the Buyer shall not rely on them in entering into the Contract, nor shall they replace or affect the Buyer’s obligation to examine the accuracy of the provided information and documents.
- (b) The Company reserves the right to amend the specifications of the Goods or to substitute any part of the Goods for goods of a similar specification at any time and without notice.
- (c) Every effort is made to ensure that the date of manufacture of second-hand machinery is correctly stated. However, the date so stated and specifications given on the basis of the supposed date of manufacture shall not form part of the Contract description, nor shall any statements of the date of manufacture or specifications based thereon be taken as a representation or warranty or guarantee that the statements made and the specifications given are correct.

12. LOCAL REPRESENTATIVES

The terms “agents” or “representatives” mean only those appointed to receive enquiries for onward transmission to and to be dealt with by the Company. No such “agents” or “representatives” are authorized by the Company to incur any liability, give any guarantee or warranty, or make any representations or transact any business on the Company’s behalf.

13. INSTALLATION, TRAINING AND ACCEPTANCE OF MACHINES

- (a) Unless explicitly agreed otherwise in writing, in the event that the Company will make available any fitters or other staff to the Buyer, the Company will charge the Buyer with any hours of working and traveling, as well as with any additional costs, according to the rates used by the Company. Any additional costs resulting from the fact that a fitter or other staff cannot start performing his activities immediately upon arrival or must interrupt his activities because of the preparatory work not being ready or for any reason whatsoever for which the Company cannot be held responsible shall be borne in full by the Buyer. For completeness’ sake: if any activities by any fitter, instructor or other staff cannot be performed during normal business hours, any additional costs resulting there from shall also be borne by the Buyer.
- (b) The Buyer should secure in advance the advice of a qualified surveyor whenever instructions for the removal or installation of machinery are given to the Company and the Company shall be under no obligation to ensure that the Buyer has sought such advice but shall be entitled to assume that such advice has been obtained and that the premises are not defective. For completeness’ sake, the Company shall not be liable for any loss or damage caused by reason of the defective or weak or otherwise unsuitable condition of any floor, staircase or any other part of any building in which the Company shall be required to deliver or install any good or from which the Company shall be required to move machinery.
- (c) When the Company contracts to carry out the installation of the Goods at the Buyer’s premises or any other location as designated by the Buyer, the Company shall nevertheless not be responsible or liable for any loss, injury, or damage incurred by or caused to the Buyer whatsoever or howsoever arising from any act, negligence, omission or default of the Company’s servants or agents (insofar as permitted by law) and the Buyer will indemnify the Company against claims in respect of death or injury howsoever caused to any of its employees or to those of its agents or other contractors while in or near the Buyer’s premises.
- (d) If the installation of the Goods forms part of the Contract the installation shall be on the ground floor of the Buyer’s premises with clear access for the equipment required thereto, unless otherwise agreed in writing.
- (e) If installation of a machine forms part of the Contract the Buyer shall be responsible for providing at his own costs and for his own responsibility the

utility supply to the site of the machine or machines to be installed, for all heating, wiring and compressed air necessary, the provision of a foundation which is necessary for the machine or machines in question and all other construction work (hacking, breaking, brick laying etc.), hoists, transportation means and other tools for bringing the Goods at their place of installation, and all other assistance required (for carrying, cleaning etc.). Failing such, the Company will be entitled to charge – and the Buyer will pay – any costs and fees incurred in relation to the obtaining or engagement of any of the foregoing. Furthermore, the Buyer shall also be responsible for the safety at the workspot and for injuries and damage to or theft of tools and other equipment which are in use by the Company's employees. Disclaimers on signs, notice boards, entrance forms etc. shall be null and void in this respect.

- (f) When the Company undertakes to provide the Buyer with training in regard to a machine – irrespective whether at the Company's premises or at the Buyer's premises – it will supply a skilled instructor sufficiently acquainted with the mechanism and running of the machine to assist and advise the Buyer's skilled operator(s) in the working of the machine during a certain period of time in accordance with the Company's standards. All costs and expenses with respect to such training, either incurred by the Company or the Buyer, such as but not limited to materials (e.g. paper, ink or the like), travel expenses and lodging shall be borne by the Buyer. Neither the Company nor the instructor shall be responsible or liable (insofar as may be permitted by law) for any loss, injury, or damage whatsoever and howsoever arising from any act, omission or default on the part of the instructor. The Buyer shall indemnify the Company and the instructor accordingly at their first request.
- (g) Upon completion of the installation of a machine the Company and the Buyer shall, at the Company's invitation, forthwith sign a note of acceptance, stating that all major component parts as specifically mentioned in the Contract have been installed and that the machine is in a normal working order and condition. Buyer can and shall not refuse acceptance unless he demonstrates that not all major component parts specifically mentioned in the Contract have been installed and/or that the machine, operated by the Company, is not in a normal working order and condition. Acceptance shall not prejudice the Company's obligations under the Warranty, or the obligations of the Company to deliver any missing minor parts and to repair minor defects which were noticed during the acceptance within the shortest time possible.
- (h) If the Buyer for whatever reason does not cooperate as mentioned in sub-clause (g) above, or when he will in any way use or allow any other person than the Company's operators to use the machine without the Company's express consent before the acceptance of the machine, then the machine shall be deemed automatically and unconditionally accepted by the Buyer.

14. WARRANTY

- (a) Subject to this clause 14 and without prejudice to clause 15 below, the Company hereby guarantees that the Goods are free from defects in material or workmanship (“Warranty”) for a period as further specified in the Contract (“Warranty Period”).
- (b) Unless specifically agreed otherwise, the Warranty Period regarding parts is in any event limited to 12 months. Unless specifically agreed otherwise, the Warranty Period will commence upon the date of the note of acceptance as set out in clause 13 (g) above or - in case a note of acceptance is not agreed in the Contract - as of the day of delivery of the Goods. The Goods delivered must be checked by or for the Buyer upon delivery with respect to numbers and visible defects and any shortages. Visible defects and shortages must be reported in writing (specifying the defect complained of) to the Company immediately after delivery. The Buyer must report in writing (specifying the defect complained of) defects not visible upon delivery within 48 hours of their discovery, though in any event within 48 hours after the time that the Buyer should reasonably have discovered them. The possibility of submitting a complaint will lapse in the event that the relevant defect can be attributed to the Buyer. The Buyer will be obliged to perform the inspection with due care or to have the inspection performed with due care, be it by the hauler engaged or another party. The Buyer will bear the risk for inspecting the Goods by means of random checks and may not rely on the fact that it did not observe a defect that was visible and could have been discovered upon delivery because it – or a third party engaged by it – did not inspect the entire shipment. The Company’s opinion as to the cause of the alleged defect shall be final and binding. For completeness’ sake, Goods cannot be returned to the Company without the Company’s prior written permission; if this permission is given, the relevant Goods shall be returned carriage paid.
- (c) In the event of a complaint on good grounds, the Company will be obliged -at its own discretion - only to repair the defect or replace the relevant Good, according to its own reasonable judgment. Subject to the provisions of clause 13 and 14 of these Conditions, the Warranty shall apply to any repaired or replacement goods (or parts thereof) under the Warranty for the unexpired portion of the Warranty Period.
- (d) The provisions of clause 14 sub (c), (d) and (e) of these Conditions shall apply equally in case of repairs under a Warranty.
- (e) The Warranty shall not apply under any circumstances to Goods including parts and components thereof defective by reason of fair wear and tear or by reason of abnormal wear (including but not limited to improper, incorrect or careless use, overload, unsuitable equipment, or electric, electronic or electrical effects (such as temporary or sustained absence of the required voltage on the electricity grid)) and tear caused by the materials used by the Buyer and otherwise only if:

- i) the Goods have been used solely and maintained in accordance with the operating manuals and other instructions, by competent and diligent persons exercising reasonable care, and
 - ii) there has been no attempt by the Buyer or any third person to repair, alter, replace, temper or interfere with the Goods, and
 - iii) the defect was not caused directly or indirectly by the Buyer or any third party nor by external influences or because of an unsuitable environment (including defects in the building where the Goods are located) or unsuitable materials, and
 - iv) for merely short-term, software-typical interruptions or malfunctions, and
 - v) the defect was not caused or worsened directly or indirectly by a continued operation of a machine whilst a defect or likely defect had been or should have been noticed reasonably by any of the Buyer's operators or engineers.
- (f) The Warranty shall only apply to Goods which under normal circumstances should not fail to function properly within the Warranty Period and specifically excludes all consumables such as filters, blankets, rubber rollers, switches, (light bulbs, fuses etc.).
- (g) All parts and components exchanged under the Warranty shall become the property of the Company. Whilst in transit parts and components are at the Buyer's risk in all respects. Parts and components sent to the Company for examination must bear the senders name and address, the machine or part number and the year of manufacture if possible.
- (h) The Company shall not be obliged to execute any repair under a Warranty until any and all amounts due by the Buyer to the Company or any of its affiliated companies, agents or distributors has been paid in full within the term as provided for in clause 8 above.
- (i) No Warranty is given in respect to second hand, reconditioned or rebuilt machines including its Software, respectively for machines which have not been installed completely under the responsibility of the Company, except such as may be specifically given by the Company in writing at the time (in such case, however, the obligations of the Company shall not be extended beyond the obligations of the Company as per this clause 14).
- (j) The above Warranty supersedes and is in lieu of all other warranties expressed or implied which are hereby excluded to the extent to which they may by applicable law be excluded.
- (k) Any and all claims for repair of the relevant Good and/or replacement of the Good and/or supply of any missing part, on whatever basis, as well as any right to dissolve the agreement will lapse at the earliest of the following times: a)

upon late reporting pursuant to clause 14.b), or b) upon expiration of the Warranty Period.

15. **LIMITATION OF LIABILITY**

- (a) Any liability on the part of the Company on the basis of an attributable failure with respect to the Company's offers, orders and agreements will be restricted to the provisions laid down in clause 14 above. The Company will not - irrespective of the legal basis of the Buyer's claim - be liable with respect to any damage, direct or indirect, or consequential such as, inter alia, losses due to delays, lost profits and penalties forfeited by the Buyer. The Buyer will indemnify the Company against any claims by third parties in connection with Goods supplied by the Company.
- (b) The above-mentioned restrictions with respect to liability will not apply in the event that the damage is the consequence of an intentional act or intentional omission or of gross negligence on the part of the Company or its executive management.
- (c) The pricing structures of the Company being based upon the limitation of liabilities and the indemnities herein contained Buyers are advised to consider for themselves obtaining insurance cover for any claims for which the Company is pursuant to these conditions or otherwise not or less liable and in respect of any liability which may arise as a result of indemnities herein contained.
- (d) Where the Company supplies Goods or undertakes services for a Buyer to Buyer's specifications the Company shall have no liability for the defects derived in whole or in part from any specification given by or on behalf of the Buyer and the Buyer shall indemnify the Company against all actions, costs, claims and demands and all liabilities arising from compliance with the Buyer's specifications.
- (e) Without prejudice to any of the exclusions and limitations mentioned hereinabove, any liability of the Company, its servants and agents shall never exceed:
 - i) with respect to Goods sold, an amount equal to ten percent of the net sales price (excluding taxes, transportation and installation costs etc.) of those Goods;
 - ii) with respect to services rendered, including but not limited to repair and maintenance, an amount equal to the net invoiced amount for such services.

16. HEALTH AND SAFETY REGULATIONS

- (a) It shall at all times be the responsibility of Buyer to verify and secure that all safety devices attached to the Goods and/or the machine for the protection of men, the environment and/or the Goods and/or machine itself are in good working order and not disconnected and that all health- and safety regulations (whether prescribed by law or provided by the Company or manufacturer) are obeyed at all times when work is carried out with, at or near the Goods and/or the machine and further to provide proof of compliance with these obligations at the Company's demand.
- (b) Where the Goods are second-hand and bought without provision to the contrary and it is necessary to alter or add to such Goods in order to comply with Health and Safety Regulations such alterations or additions will be carried out by the Company at the cost of the Buyer in addition to the purchase price.

17. CHOICE OF LAW AND FORUM

- (a) These Conditions and any Contract of which they and quotations given form part, shall be construed solely according to the laws of the Netherlands.
- (b) In the event that Buyer is domiciled in a Member State of the European Union or in Norway, Switzerland or Iceland at the time that proceedings are commenced, any dispute, difference or question which shall arise at any time between the Company and the Buyer, shall unless otherwise expressly provided or amicably settled, be brought exclusively before the competent court of the District Court Midden-Nederland ('Rechtbank Midden-Nederland), the Netherlands, to the exclusion of any other competent court of law. Utrecht (the Netherlands) shall at all times be regarded as the place where the Contract shall be carried out, irrespective of the place of delivery of a Good or where a service is actually rendered. The above will not affect the Company's power to submit a dispute to the court that would be competent in the absence of this provision.
- (c) In the event that Buyer is not domiciled in a Member State of the European Union or in Norway, Switzerland or Iceland upon the commencement of proceedings, any dispute, difference or question which shall arise at any time between the Company and the Buyer, shall - unless otherwise expressly provided or amicably settled - be settled in accordance with the rules of the Netherlands Arbitration Institute ('Nederlands Arbitrage Instituut', or 'NAI'). Arbitration will take place in Utrecht, the Netherlands. The case will be submitted to three arbitrators and the arbitration proceedings will be conducted in Dutch.

18. SEVERABILITY

If any provision of these Conditions is declared invalid by a court having competent jurisdiction hereover the invalidity of such provisions shall not be deemed to avoid the remaining provisions.

19. **ENTIRE AGREEMENT**

Unless expressly and in writing agreed otherwise, these Conditions embody all the terms and conditions of the Contract between the parties thereto and replace all prior representations or proposals not embodied herein. Amendments to the terms and conditions herein set out shall not be valid unless reduced into writing and duly signed on behalf of all parties to the Contract.

20. **INTERPRETATION**

- (a) In these Conditions words and phrases importing the masculine gender shall include the feminine or neuter as appropriate and words importing the singular shall include the plural and vice versa.
- (b) All sections headings herein are inserted for easy reference only and shall not affect the construction or interpretation of the Contract.

21. **FORCE MAJEURE**

- (a) In no event shall the Company be liable under the Contract for any failure and/or delay in performing any of its obligations under the Contract to the extent that such failure or delay is caused by occurrences outside its reasonable control including, without limitation, acts of God, governmental acts, fire, war, (pandemic or epidemic) diseases, quarantines, lock-downs, civil commotions, disturbances in power supply, riots, strikes, labour and/or industrial disputes, delays and/or interferences in transport, failure of equipment respectively by persons or entities used in performing contractual obligations, non-compliance by suppliers of the Company, no matter where, why or how these occur, irrespective of foreseeability and irrespective for whom the risk for such events is normally pursuant to the (case) law.
- (b) The Company's offers, quotations and the Contract shall at all times be made or concluded subject to the ability to supply and to all relevant laws, regulations and acts of governmental authority and in particular to the Company gaining at normal conditions all necessary approvals and licenses with respect to the import and export of Goods and to foreign exchange control. The Company shall be under no liability whatsoever for any failure to perform the Contract in any respect which is due to non-ability to supply respectively to compliance with any such laws, regulations or acts or to the Company's failure to gain any such approvals and/or licenses.
- (c) In case the Company at the occurrence of any of the aforementioned events has already partly performed under the Contract, then it shall be entitled to charge the other Party separately for the Goods already supplied.
- (d) The Party affected by force-majeure circumstances shall immediately, but in any case not later than 3 (three) business days, notify the other Party in writing of

the onset and expected duration of the force majeure circumstances. Otherwise such Party shall forfeit its right to refer to such circumstances unless such notification is made impossible due to Force Majeure.

- (e) To the extent that the circumstance causing the Force Majeure is not of a permanent nature, the Company's obligations will be suspended. In the event that the period during which performance is not possible due to Force Majeure exceeds 60 (sixty) days or is expected to exceed 60 (sixty) days, both parties will be entitled to terminate the Contract, without any obligation to compensate the other Party for damages of any nature that may arise as a result.

22. INTELLECTUAL AND INDUSTRIAL PROPERTY

- (a) The intellectual and industrial property rights in all designs, concepts and know-how incorporated in Goods supplied to the Buyer by the Company and not originally supplied by the Buyer shall remain at all times the property of the Company or any relevant associated company of the Company.
- (b) The Buyer shall not use the Company's name, logo or any other identification marks for the purpose of advertising or publicity or otherwise without the Company's prior written consent.
- (c) To the best of the Company's knowledge and belief at the time of conclusion of the Contract all Goods (except for Goods meant in clause 14 sub d) of these Conditions that originate from the Company or from any associated company and that has been supplied by the Company can be used and maintained normally in the country where the Company has agreed to deliver the same without violating the intellectual and industrial property rights of others but no representation or warranty in this respect can be given.

23. NOTICES AND SERVICE

- (a) Any notice or other information required or authorized by these Conditions to be given by either party to the other may be given by hand or sent (by first class pre-paid post, telex, cable, facsimile transmission or comparable means of communication) to the other party at the address referred to in sub clause (d) below.
- (b) Any notice or other information given by post under sub clause (a) above which is not returned to the sender as undelivered shall be deemed to have been given on the day the envelope containing the same was so posted and proof that the envelope containing any such notice or information was properly addressed and sent by first class pre-paid post and that it has not been so returned to the sender shall be sufficient evidence that such notice or information has been duly given.
- (c) Any notice or other information sent by telex, cable, facsimile transmission or comparable means of communication shall be deemed to have been duly sent

on the date of transmission provided that a confirming copy thereof is sent by first class pre-paid post to the other party at the address referred to in sub clause (d) below within 24 hours after transmission.

- (d) Service of any legal proceedings concerning or arising out of the Contract shall be effected by causing the same to be delivered at its registered office or to such other address as may be notified by the party concerned in writing from time to time.

24. **ASSIGNMENT**

The rights and obligations of the Buyer under a Contract are not assignable by the Buyer to a third party without the Company's prior consent in writing. Where the Buyer is a leasing company or bank and has contracted for the supply of Goods on behalf of a customer with whom such Buyer has concluded a leasing or financing agreement with respect to such Goods, the term Buyer as used herein shall where the context so permits include such customer, provided always that this customer is accepted by the Company and the leasing company or bank ensures compliance by that customer of all relevant terms and conditions of the Contract. In that case it shall be permitted to the leasing company or bank to put a good for which a reservation of title applies at the disposal of such customer for use in the latter's ordinary course of business.

25. **WAIVER**

Without prejudice to the other provisions of these Conditions, including but not limited to clause 14 and 15 of these Conditions, any claim from the Buyer under a Contract shall, when not settled previously, be deemed waived and barred if not made before the competent court within fifteen months from the date of delivery of the good(s) involved respectively the anticipated date of delivery.