



**SPECIAL TERMS
& CONDITIONS
A - SALE OF
EQUIPMENT**

TMH EQUIPMENT



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Art. 1 Payment deadline

- 1.1 Invoices for the Equipment Sold shall be payable net in cash at the time of delivery. Moreover, the Supplier shall be entitled to demand an advance or even full payment before proceeding with the delivery of the Equipment Sold.

Art. 2 Delivery of the Equipment Sold

- 2.1 Delivery is EXW (ex-works), Supplier's warehouse (Incoterms® 2010) unless agreed otherwise in writing. If it is agreed, by way of a departure therefrom, that the Equipment Sold is to be delivered to a place indicated by the Client-Purchaser, then delivery may be made in the absence of the Client-Purchaser. The bill of lading shall in that case serve as proof of delivery.
- 2.2 In the event of damage to the packaging and/or an inadequate number of packages or equipment, the Client-Purchaser must report this at the time of delivery of the Equipment Sold on the bill of lading. It must notify this to the Supplier in writing within twelve (12) hours of the delivery of the Equipment Sold.
- 2.3 The Equipment Sold is delivered without fuel or with uncharged battery, unless agreed otherwise in writing.

Art. 3 Equipment Sold: transfer of risk and ownership

- 3.1 On delivery of the Equipment Sold as per Art. 2.1 of the present Special Terms & Conditions, the transfer of risk shall also take place.
- 3.2 The ownership of the Equipment Sold shall be transferred upon the occurrence of the latest of following events: on delivery of the Equipment Sold, or at the time that full payment of the Purchase Price and Costs is made. Transfer of ownership is therefore suspended until that point in time.
- 3.3 Until such time as the transfer of ownership of the Equipment Sold has been fully completed, the Client-Purchaser undertakes:
 - 3.3.1 To keep the Equipment Sold intact in nature and not to render the Equipment Sold immovable due to intended use or by incorporation, nor to mix the Equipment Sold with another moveable good; and
 - 3.3.2 To keep the Equipment Sold in good condition and to make every effort to ensure that the Equipment Sold is protected against any kind of partial or complete deterioration, including – but not limited to – as a result of fire, water damage, risk of explosion, theft, etc. The Client-Purchaser shall insure the Equipment Sold against all risks, at least for the amount of the Purchase Price and Costs.

Art. 4 Condition of the Equipment Sold and warranty by the Supplier

- 4.1 The second-hand Equipment Sold is received by the Client-Purchaser as found. Consequently, the Supplier is explicitly not liable for the failure of the second-hand Equipment Sold to meet applicable legal (European) (safety) requirements. Reception of the second-hand Equipment Sold by the Client-

Purchaser at the time of delivery, stipulated in Art. 2.1 of the present Special Terms & Conditions, shall entail acceptance of the Equipment Sold.

- 4.2 The Client-Purchaser undertakes to put the second-hand Equipment Sold into service only after it has duly satisfied itself that the second-hand Equipment Sold meets the local conditions and requirements for use, that its installation is reliable and that the conditions of use are safe. It is the exclusive responsibility of the Client-Purchaser to take the necessary measures to guarantee that the second-hand Equipment Sold meets the essential safety requirements at the time it is put into service. EC declarations issued by the Supplier are provided explicitly and exclusively under these conditions, without prejudice to the provisions of Art. 9.2 of the General Conditions. The Client-Purchaser shall indemnify the Supplier if it emerges that the second-hand Equipment Sold was put into service without the adaptations, repairs and/or inspections required having been made in accordance with professional standards and with a view to the safe operation of the second-hand Equipment Sold.
- 4.3 Art. 4.1 and 4.2 of the present Special Terms & Conditions shall not apply if the Client-Purchaser is also – and exclusively – the (end) user of the second-hand Equipment Sold.
- 4.4 If the Client-Purchaser is of the opinion that the new Equipment Sold that is delivered to it does not match the order or is visibly defective, the Client-Purchaser must file a written complaint to the Supplier within no more than 24 hours after the delivery of the Equipment Sold. If, after the expiry of that deadline, the Supplier has received no written complaint from the Client-Purchaser, the Client-Purchaser shall be deemed to have accepted the Equipment Sold.
- 4.5 Latent defects must be reported in writing by registered letter to the Supplier by the Client-Purchaser within a period of eight (8) working days after the Client-Purchaser has identified them or ought normally to have identified them, and in any case within a period of three (3) months after the date of delivery of the Equipment Sold.
- 4.6 In the case of second-hand, tailor-made and reconditioned Equipment Sold, the Supplier shall furthermore be liable only for such latent defects as affect the essential components of the Equipment Sold to such a degree, and oblige the Client-Purchaser to carry out repairs to such a degree, that had it known about them, the Client-Purchaser would never have proceeded with the Purchase Agreement.
- 4.7 The Supplier shall not be required to safeguard the Client-Purchaser if it emerges that:
 - 4.7.1 The Client-Purchaser or a third party has made, or attempted to make, repairs or changes to the Equipment Sold; or
 - 4.7.2 The defects are the consequence of improper or abnormal use, such as, for example, the use of the Equipment Sold for purposes other than those for which it is reasonably intended, overloading, (inappropriate) application in a way which does not match the instructions for correct use, assembly, maintenance, installation or use which does not match the technical or safety standards applicable in the place where the Equipment Sold is used; or
 - 4.7.3 The defects have not been reported to the Supplier in time or in the



correct way; or

- 4.7.4 The documentation belonging with the Equipment Sold, and not deriving from the Supplier, including instructions for use or operation, safety symbols, etc. is incorrect and/or incomplete; or
- 4.7.5 The Client-Purchaser fails to comply with the obligation to register which includes regular maintenance of the Equipment Sold; or
- 4.7.6 The Equipment Sold is used together with accessories or auxiliary attachments which are not sold or supplied as accessories with the Equipment Sold, or not intended to be used together with the Equipment Sold.
- 4.8 Latent defects are established jointly. If a latent defect relating to the Equipment Sold is found, it is explicitly agreed that the Supplier, according to its expert opinion and at its discretion, may either repair or replace the Equipment Sold, or else grant a price reduction, or else that the Sale Agreement may be dissolved with the reimbursement of the Sale Price and the return of the Equipment Sold. The Client-Purchaser is not entitled to claim any additional reimbursement. Parts replaced shall automatically and without reimbursement become the property of the Supplier. All costs in respect of transport, customs, assembly, dismantling and travel shall be borne by the Client-Purchaser.
- 4.9 Insofar as granted under the law, all guarantees or conditions implicit herein shall be excluded.

Art. 5 Handling of complaints regarding the Equipment Sold

- 5.1 If the Client-Purchaser has a complaint regarding the Equipment Sold on the grounds of Art. 7.2 of the General Conditions or Art. 4 of the present Special Terms & Conditions, it must submit the said complaint in writing within the period set out in those articles, giving the reasons, and report it to the Supplier. The Supplier will examine the complaint and write back to the Client-Purchaser within a reasonable deadline.
- 5.2 The Equipment Sold will not be taken back, other than after the written agreement of the Supplier in response to a duly substantiated written request from the Client-Purchaser. Without prejudice to the provisions of Art. 7.2 of the General Conditions and Art. 4 of the present Special Terms & Conditions, Equipment Sold which is no longer in its original packaging, or whose packaging has already been opened, or Equipment Sold which has been ordered, developed or reconditioned specially for the Client-Purchaser will not be taken back under any circumstances.
- 5.3 If the Supplier does accede to a request from the Client-Purchaser to take back Equipment Sold which does not show any visible or latent defect, this will be only against payment of a return cost of at least 15% of the Sale Price plus transport costs.

