

# General Terms and Conditions of Performance, Sale and Delivery

# ecomac

GEBRAUCHTMASCHINEN GmbH

## I. Subject of the contract, scope, offer

1. Pre-worded terms and conditions ("general terms and conditions" in the sense of § 305 of the German Civil Code (hereinafter known as the BGB) used by Customer for various contracts shall not be part of the contract. These general terms and conditions of performance, sale and delivery issued by ecomac Gebrauchtmaschinen GmbH shall apply exclusively.
2. These terms and conditions shall apply to all work completed by ecomac Gebrauchtmaschinen GmbH, regardless of the legal nature of the contract on which the work is based. They therefore apply both to purchase contracts and to work contracts, delivery contractors and to combined contracts.
3. Individual agreements relating to the rights and obligations of the parties to the contract shall take precedence over these terms and conditions.
4. All agreements entered into between ecomac Gebrauchtmaschinen GmbH and Customer relating to the performance of the contract shall be made in writing.
5. These terms and conditions shall only apply in relation to merchants, legal entities subject to public law and trustees of public funds (as defined by §310 BGB).
6. These terms and conditions shall also apply to all future business transactions between ecomac Gebrauchtmaschinen GmbH and Customer.
7. If an order qualifies as an offer (as defined by §145 BGB), ecomac Gebrauchtmaschinen GmbH may accept such an offer within 4 weeks of its receipt.

## II. Documents, business secrets, preparatory work

1. ecomac Gebrauchtmaschinen GmbH shall retain all rights, in particular property rights and copyrights, to all cost estimates, calculations, plans, illustrations, drafts, preparatory work, drawings and other documents. These must not be made accessible to third parties without the written consent of ecomac Gebrauchtmaschinen GmbH. ecomac Gebrauchtmaschinen GmbH shall not make any documents indicated as confidential by Customer accessible to third parties without the written consent of Customer. Documents supplied by ecomac Gebrauchtmaschinen GmbH may be used solely to prepare for the conclusion of the contract, and thereafter for its execution. Any other use shall be prohibited.
2. Customer may not disclose any business secrets of ecomac Gebrauchtmaschinen GmbH and companies affiliated to ecomac Gebrauchtmaschinen GmbH (in the sense of § 15 German Law of Share Corporations) to third parties. ecomac Gebrauchtmaschinen GmbH may not disclose business secrets of Customer and companies affiliated to it (in the sense of § 15 German Law of Share Corporations) to third parties.
3. Both ecomac Gebrauchtmaschinen GmbH and Customer shall use suitable means to ensure that their directors, officers and employees also comply with the above obligations.

## III. Lead time, scope of delivery, acceptance, delays

1. The lead time shall commence with the dispatch of the order confirmation and clarification of all technical questions, provided that Customer has made available all plans, documents, approvals, releases and permits required, and any agreed advance payment has been received.
2. The work to be carried out by ecomac Gebrauchtmaschinen GmbH shall be deemed to have been completed on schedule if the subject of the contract is shipped or Customer is notified that the goods are ready for shipment before the elapse of the lead time.
3. Delays caused by a force majeure shall not entitle Customer to any claims (in particular claims for a contractual penalty or damages) against ecomac Gebrauchtmaschinen GmbH. A force majeure shall be regarded as any unforeseeable event or an event, which – though foreseeable – is beyond the influence and control of ecomac Gebrauchtmaschinen GmbH and the effects of which cannot be avoided by the exercise of reasonable care by ecomac Gebrauchtmaschinen GmbH. Such events include but are not limited to delayed deliveries by subcontractors / suppliers, acts of war (whether declared or not), war-like conditions, riots, revolutions, rebellions, military or civilian coups d'état, insurrection, turmoil, outrages, blockades, embargos, government orders, sabotage, strikes, go-slow strikes, lockouts, epidemics, fires, floods, storm tides, typhoons or other adverse weather conditions, general scarcity of raw materials and supplies, shipwreck, insufficient unloading capacity or port facilities, delays resulting from transportation, non-availability of cargo capacity, justifiable change / exchange of freight forwarder and/or carrier and/or shipping company and/or other commercial forwarding company, accidents in transit, earthquakes, radioactive accidents, physical or man-made obstructions of any kind at the building site / production facility.
4. In all cases of hindrance, regardless of their nature, which are not the responsibility of ecomac Gebrauchtmaschinen GmbH, ecomac Gebrauchtmaschinen GmbH shall be entitled to demand an extension of the lead times from Customer as well as additional payments to compensate it for additional work and/or costs.
5. If the shipment is postponed at the request of Customer, Customer shall reimburse any costs actually incurred for the storage of the goods. If the goods are stored at a business owned by ecomac Gebrauchtmaschinen GmbH, it shall be entitled to demand a minimum sum of 0.5% of the agreed price per month as compensation for its additional costs. This stipulation shall not prevent ecomac Gebrauchtmaschinen GmbH or Customer from furnishing proof of higher or lower costs, respectively.
6. Clause III.5 shall equally apply to any other case of delayed acceptance on the part of Customer. Where Customer is in default with regard to acceptance or is in violation of any other contractual obligation with regard to cooperation, the risk of accidental loss, destruction or accidental deterioration of the goods shall be transferred to Customer as soon as Customer becomes in default.
7. This agreement shall not preclude any further rights that ecomac Gebrauchtmaschinen GmbH may have.
8. Compliance with the lead time shall be subject to Customer duly fulfilling his contractual duties promptly.
9. Partial deliveries by ecomac Gebrauchtmaschinen GmbH may only be rejected if it is not reasonable to expect Customer to accept them.
10. If an acceptance procedure is provided for by contract or by law, such acceptance shall be governed by the legal provisions applicable to acceptance procedures in contracts for work.

## IV. Price and payment

1. The agreed prices are stated on an ex-works basis. Any shipping costs, including the costs of packaging, loading, stowage and unloading shall be borne by Customer. The value-added tax applicable at the time of delivery shall be added to the above prices.
2. If ecomac Gebrauchtmaschinen GmbH is obliged under the German Packaging Directive to take back packaging used for transportation, Customer shall bear the costs of returning the used packaging and the reasonable costs for the reuse thereof. If the returned packaging cannot be reused, Customer shall bear the costs of the material recycling incurred by ecomac Gebrauchtmaschinen GmbH. In addition, Customer shall pay any duties, clearance charges, taxes and other charges incurred as a result of returning the transport packaging.
3. Containers used for transportation are not covered by this contract and are not regarded as packaging. They shall remain property of ecomac Gebrauchtmaschinen GmbH. They shall be imported, re-exported and returned to ecomac Gebrauchtmaschinen GmbH by Customer at its expense (shipping costs, duties, clearance charges, taxes and other charges) and risk.
4. Tools, surplus material, welding bottles and other auxiliary equipment are not covered by this contract and shall remain property of ecomac Gebrauchtmaschinen GmbH. They shall be imported, re-exported and returned to ecomac Gebrauchtmaschinen GmbH by Customer at its expense (shipping costs, duties, clearance charges, taxes and other charges) and risk.
5. The agreed price shall be paid in cash and without any deductions.
6. ecomac Gebrauchtmaschinen GmbH shall be entitled to interest on payments due and in arrears to the extent provided by law. The assertion by ecomac Gebrauchtmaschinen GmbH of further rights or damages shall not be affected by this.
7. Customer shall not be entitled to any rights of set-off or retention, unless his counter-claims have become legally effective (res judicata), are uncontested or have been acknowledged by ecomac Gebrauchtmaschinen GmbH which was given at least one month's advance notice of such counter-claim.
8. If circumstances are brought to the attention of ecomac Gebrauchtmaschinen GmbH after the conclusion of the contract, which cast doubt on the credit standing of Customer, ecomac Gebrauchtmaschinen GmbH shall be entitled to security for payment in the form of a simple (i.e. not payable on first demand), irrevocable payment bond or bank guarantee of indefinite term, which shall be returned against payment of the price owed.
9. ecomac Gebrauchtmaschinen GmbH shall be entitled to increase the agreed price reasonably if there are cost increases after the conclusion of contract, in particular where this is due to collective labour agreements or increases in the cost of materials. Upon request ecomac Gebrauchtmaschinen GmbH shall furnish proof for such increases to Customer.
10. ecomac Gebrauchtmaschinen GmbH shall be entitled to increase the agreed price reasonably if – after the conclusion of contract – Customer requests that the subject of contract be modified,

and additional expenses and work are required for such modifications. Upon request, ecomac Gebrauchtmaschinen GmbH shall furnish proof for the additional work to Customer.

11. Customer shall cause the agreed purchase price to be credited, at his own risk and expense, to one of the bank accounts indicated by ecomac Gebrauchtmaschinen GmbH.

## V. Transfer of risk

1. The risk of accidental loss, destruction and accidental deterioration of the subject of contract shall pass to Customer upon handing over of the object of contract to the first carrier. This shall also apply to any partial shipments or in cases where ecomac Gebrauchtmaschinen GmbH itself has accepted additional costs, such as the cost of shipment or of other services, e.g. transportation, erection or assembly of the subject of contract.
2. Where the subject of contract or part thereof is ready for shipment, and shipment or delivery is delayed for reasons in the responsibility of Customer, the risk of accidental loss, destruction and accidental deterioration shall be transferred to Customer on the day the goods are ready for shipment.
3. Where ecomac Gebrauchtmaschinen GmbH arranges for the transportation of the subject of contract, and damage in transit or a defect due to transportation is caused to the above subject after delivery to the carrier, ecomac Gebrauchtmaschinen GmbH shall assign its claims resulting from this, if any, against transport insurance company(ies) and carriers to Customer at the latter's request (any liability for the existence of such claims to be excluded); such assignment shall be concurrent with payment of the overall price agreed for the subject of contract and of all costs owed. Any further claims against ecomac Gebrauchtmaschinen GmbH resulting from any damage in transit or a defect due to transportation shall be excluded. This shall also apply where the subject of the contract includes assembly work to be performed or the erection of a turnkey plant.
4. Any limitation periods under transport or maritime law, bar periods, exclusions of liability and limitations of liability, which apply in favour of natural persons or legal entities entrusted with the transportation / loading / unloading / storage of the subject of contract in their relationship to ecomac Gebrauchtmaschinen GmbH shall apply equally in favour of ecomac Gebrauchtmaschinen GmbH in the contractual relationship between Customer and ecomac Gebrauchtmaschinen GmbH.
5. Customer shall examine the subject of contract for defects immediately upon unloading in the port of destination and – if a defect is found or suspected to exist – shall acknowledge receipt subject to reservation only and shall notify ecomac Gebrauchtmaschinen GmbH immediately of any such existing or suspected defect. If the above obligations are not observed, the transport insurance company(ies) coverage is voided. Where cover by the transport insurance company(ies) is voided for the above reasons, the liability of ecomac Gebrauchtmaschinen GmbH for damage covered by the transport insurance company(ies) exclusion clause shall also be excluded.

## VI. Retention of ownership

1. ecomac Gebrauchtmaschinen GmbH shall retain ownership of the subject of contract until payment of all amounts owed by Customer has been received irrevocably and without reservation. Until such date, Customer shall neither be entitled to charge the subject of contract with a security interest (e.g. ownership by way of security, right of lien, mortgage, land charge, etc.) nor to resell the same. Where the law applicable at the site of construction / erection (lex rei sitae) does not recognize a provision of security by means of retaining ownership, such other means of providing security shall be deemed to have been agreed upon, which approaches most closely a "retention of ownership" or which constitutes according to that law the typical security (e.g. "charge" or "security interest, attached and perfected"). Customer shall fully cooperate in all acts (in particular, the provision of formal declarations) required by the law applicable at the site of construction / erection for the creation of a fully enforceable retention of ownership or any other fully enforceable means of providing security.
2. Customer shall notify ecomac Gebrauchtmaschinen GmbH immediately of any attachment, seizure or other measure taken by third parties with regard to the subject of contract. Customer shall submit to ecomac Gebrauchtmaschinen GmbH any documents required for an intervention in this regard.
3. As long as rights are retained in the subject of contract in favour of ecomac Gebrauchtmaschinen GmbH pursuant to the above clause VI.1, ecomac Gebrauchtmaschinen GmbH shall be entitled – with prior notice – to reclaim the subject of contract delivered in case there has been a breach of duty by Customer, in particular where the ownership of ecomac Gebrauchtmaschinen GmbH of the subject of contract is endangered, where the subject of contract delivered is improperly used by Customer, or where Customer defaults on payment. Where Customer does not act on the claim to return the subject of contract, the required number of ecomac Gebrauchtmaschinen GmbH's staff shall be irrevocably entitled to enter the construction site / manufacturing plant of Customer and to disassemble and remove the subject of contract delivered. Reclaiming the subject of contract shall not constitute a rescission of the contract, unless ecomac Gebrauchtmaschinen GmbH has expressly declared such rescission in writing. Any attachment of the subject of contract by ecomac Gebrauchtmaschinen GmbH shall constitute a rescission of contract.
4. Where the subject of contract is taken back, ecomac Gebrauchtmaschinen GmbH shall be entitled to resell it; the proceeds of such a sale shall be set off against any liabilities of Customer, while allowing for reasonable costs of the sale.
5. Any processing or transformation of the subject of contract by Customer shall always be carried out for and on behalf of ecomac Gebrauchtmaschinen GmbH. Where the subject of contract is processed together with other subjects not owned by ecomac Gebrauchtmaschinen GmbH, ecomac Gebrauchtmaschinen GmbH shall acquire co-ownership of the new corporeal subject in the proportion of the value of the subject of contract to the other processed subjects at the time of processing. The provisions regarding reserved rights applicable to the subject of contract shall apply accordingly to the corporeal subject resulting from processing.
6. Where the subject of contract is inseparably commingled with other subjects not owned by ecomac Gebrauchtmaschinen GmbH, ecomac Gebrauchtmaschinen GmbH shall acquire ownership of the new corporeal subject in the proportion of the value of the subject of contract to that of the other subjects at the time of commingling. If commingling takes place in such a way that Customer's corporeal subject is to be considered the principal subject, a transfer of co-ownership by Customer to ecomac Gebrauchtmaschinen GmbH on a pro-rata basis shall be deemed to have been agreed upon. The sole ownership or co-ownership thus created shall be held in custody by Customer for ecomac Gebrauchtmaschinen GmbH.
7. As security for the claims of ecomac Gebrauchtmaschinen GmbH against Customer, Customer shall assign to ecomac Gebrauchtmaschinen GmbH any claims accruing to Customer against any third party as a result of connecting the subject of contract with real estate.
8. ecomac Gebrauchtmaschinen GmbH undertakes to release the securities it is entitled to at the request of Customer, to the extent that the value of realizable securities of ecomac Gebrauchtmaschinen GmbH exceeds the secured claims by more than 20%; the selection of the securities to be released shall be at the discretion of ecomac Gebrauchtmaschinen GmbH.

## VII. Rights of Customer in case of defects

1. ecomac Gebrauchtmaschinen GmbH shall not be held liable for defects or damage arising from the following:  
Defects resulting from constructions prescribed or specified by Customer, defects resulting from materials (including sample materials) prescribed, specified or supplied by Customer, or defects resulting from other input of Customer.  
Defects or damage arising after the transfer of risk due to faulty or negligent treatment, operating by untrained staff, excessive use, inappropriate operating media, faulty construction work, inappropriate site or such defects arising due to special external circumstances not envisioned by the contract, as well as non-reproducible software errors.  
Where Customer or third parties apply unsuitable modifications or maintenance work, any liability of ecomac Gebrauchtmaschinen GmbH for these modifications, work or their consequences shall be excluded.
2. ecomac Gebrauchtmaschinen GmbH shall not be liable for wearing parts (definition to follow) of the subject of contract. Wear is the progressive loss of material on the surface of a solid body, due to mechanical causes, i.e. contact with and movement relative to that of a solid, liquid or gaseous opposing body.  
A wearing part is one used in places which unavoidably experience wear from operations, in order to protect other operating parts from wear, and which by design is intended for replacement.
3. Where the defective part is a product delivered by a third party, the liability of ecomac Gebrauchtmaschinen GmbH shall initially be limited to an assignment of the liability claims to

which ecomac Gebräuchtmaschinen GmbH is entitled against such third party. Only once legal action has been taken against such third party by Customer shall ecomac Gebräuchtmaschinen GmbH's own liability be revived. This limitation of liability shall not apply, where the liability of ecomac Gebräuchtmaschinen GmbH arises due to ecomac Gebräuchtmaschinen GmbH withholding a defect in order to deceive or assuming a guarantee regarding a quality of a product manufactured by a third party.

4. If the subject of the contract is an item that has not expressly been offered as "used", the following shall apply:
  - (a) ecomac Gebräuchtmaschinen GmbH shall be liable to Customer that the subject of contract at the time of the transfer of risk to Customer is free of physical and legal defects. Irrelevant deviations from qualities agreed upon shall not constitute defects.
  - (b) Where a defect in the subject of contract gives rise (while taking into account clauses VII.1 to 3, above) to the respective remedial rights of Customer, Customer shall, at first, only be entitled to demand remedial action with regard to the defects within a reasonable time, whereby ecomac Gebräuchtmaschinen GmbH is entitled to choose, according to its reasonably exercised discretion, between correction of defects or replacement delivery. Where the claim arises due to ecomac Gebräuchtmaschinen GmbH withholding a defect in order to deceive or granting a guarantee regarding a quality of the subject of contract, Customer shall have the right to choose between correction of defects and replacement delivery. The costs necessary for the purpose of remedial action shall be borne by ecomac Gebräuchtmaschinen GmbH. Replaced parts shall become property of ecomac Gebräuchtmaschinen GmbH.
  - (c) When requested to do so by ecomac Gebräuchtmaschinen GmbH and at the latter's expense, Customer shall send the defective parts in question to ecomac Gebräuchtmaschinen GmbH for repair or replacement, unless the defect requires repair at the place of installation.

In such a case, ecomac Gebräuchtmaschinen GmbH's obligation to provide remedial action with regard to the defective part shall be deemed to have been completely fulfilled if ecomac Gebräuchtmaschinen GmbH returns the duly repaired part or sends a corresponding replacement part to Customer.

Where costs have increased due to the subject of contract having been brought to a site other than Customer's place of business, contrary to the usage originally specified, claims of Customer for such additional costs, that are made necessary by the remedial action, in particular costs due to transportation and infrastructure, labour and material, shall be excluded.
  - (d) If Customer does not accept the remedial performance offered by ecomac Gebräuchtmaschinen GmbH pursuant to the contract, after the setting and fruitless expiry of an extension of time ecomac Gebräuchtmaschinen GmbH shall be released from liability for the claimed defect.
  - (e) Where remedial action has failed, Customer shall be entitled – subject to the conditions contractually agreed upon, including those provided for by these general terms and conditions of performance, sale and delivery – to make any other claims based on the defect. In particular, failure of remedial action shall be established, where ecomac Gebräuchtmaschinen GmbH has allowed a reasonable extension of time allotted by Customer to pass fruitlessly, or has unduly delayed or refused remedial action, or where a reasonable number of attempts at remedial action have been unsuccessful.
  - (f) ecomac Gebräuchtmaschinen GmbH may refuse correction of a defect, where Customer does not make the agreed payments. Customer shall only be entitled to retain payment for cause, where the notice of defect is justified beyond all doubt. This right of retention shall be limited in its amount to four times the cost necessary to correct the defect. Where Customer makes a claim based on a defect, and it is subsequently shown, in particular by means of an appropriate inspection by ecomac Gebräuchtmaschinen GmbH, that the claim based on defect made by Customer is unwarranted for factual or legal reasons, ecomac Gebräuchtmaschinen GmbH shall be entitled to reasonable payment and reimbursement of all expenses for services, particularly those rendered in relation to the inspection.

5. If the subject of the contract is a product that has been expressly offered by ecomac Gebräuchtmaschinen GmbH as "used", but without any prior restoration of the subject of the contract indicated by a note from ecomac Gebräuchtmaschinen GmbH (such as "factory restored"), all claims made by Customer for defects shall be excluded. This exclusion of liability shall not apply if the liability of ecomac Gebräuchtmaschinen GmbH arises due to ecomac Gebräuchtmaschinen GmbH withholding a defect in order to deceive or assuming a guarantee regarding a quality of the subject of the contract.

6. If the subject of the contract is a product that has been expressly offered by ecomac Gebräuchtmaschinen GmbH as "used", and with prior restoration of the subject of the contract indicated by a note from ecomac Gebräuchtmaschinen GmbH (such as "factory restored"), the following shall apply:
  - (a) Customer shall initially only be entitled to demand remedial action for the defect.
  - (b) If it can furnish proof that the attempt at remedial action has failed, Customer shall be entitled to demand the reimbursement of costs for having remedial action completed elsewhere. In particular, failure of remedial action shall be established, where ecomac Gebräuchtmaschinen GmbH has allowed a reasonable extension of time allotted by Customer to pass fruitlessly, or has unduly delayed or refused remedial action, or where a reasonable number of attempts at remedial action have been unsuccessful.
  - (c) If the subject of the contract proves to be irreparable, Customer may only withdraw from the contract if the subject of the contract is not suitable for its conventional use as a result of the defect.

Where the claim arises due to ecomac Gebräuchtmaschinen GmbH withholding a defect in order to deceive or granting a guarantee regarding a quality of the subject of contract, the limitations of the defect rights of Customer set out in clauses VII.6 (a) – (c) shall not apply.

7. All claims for damages shall be subject to the limitations, modifications and exclusions provided by the following Article VIII, as set out below.

#### VIII. Limitation or exclusion of the liability of ecomac Gebräuchtmaschinen GmbH

1. Customer shall carefully observe both the instructions for use and the operating instructions, as well as the safety information provided by ecomac Gebräuchtmaschinen GmbH. In particular, Customer shall comply with the instructions of ecomac Gebräuchtmaschinen GmbH on how the subject of contract is to be used without risk, which precautions are to be taken regularly and in individual cases, and which types of misuse are to be avoided. If Customer breaches this duty, ecomac Gebräuchtmaschinen GmbH shall not be liable for any resultant damage.
2. Limitation of liability of ecomac Gebräuchtmaschinen GmbH for damage, both direct and consequential, resulting from defects:

ecomac Gebräuchtmaschinen GmbH shall neither be liable for any direct damage resulting from defects (including damage consisting of lost profits) nor for consequential damage resulting from defects, regardless of legal reason. This exclusion of liability shall not apply to claims by Customer for damage based on gross fault (intent / gross negligence).
3. Limitation of liability of ecomac Gebräuchtmaschinen GmbH for ordinary/minor negligence:

Any claims of Customer, regardless of legal reason, for damages not based on gross fault (intent / gross negligence) on the part of ecomac Gebräuchtmaschinen GmbH shall be excluded, unless the damage is due to the presence of a defect or the breach of material contractual duties (so-called "cardinal duties"), the fulfilment of which is a prerequisite to the proper execution of the contract.
4. Limitation of liability of ecomac Gebräuchtmaschinen GmbH for not typically foreseeable damage:

Unless any claims for damages by Customer are already excluded due to the limitations of liability of ecomac Gebräuchtmaschinen GmbH for direct and consequential damage (clause VIII.2) and for ordinary negligence (clause VIII.3), where such claims – regardless of legal reason – are not based on gross fault (intent / gross negligence) on the part of ecomac Gebräuchtmaschinen GmbH, such claims shall be limited in their amount to compensation for such damage which ecomac Gebräuchtmaschinen GmbH, taking into consideration the circumstances that ecomac Gebräuchtmaschinen GmbH knew or should have known at the time of conclusion of the contract, should have been able to foresee as a possible consequence of a breach of duty or a breach of contract (typically foreseeable damage).
5. Limitation of liability of ecomac Gebräuchtmaschinen GmbH for improper performance:

Unless a claim by Customer has already been excluded due to the limitations of liability in favour of ecomac Gebräuchtmaschinen GmbH with regard to direct or consequential damages (clause VIII.2) and for ordinary negligence (clause VIII.3), where – as a result of improper performance – Customer asserts a claim for either damages due to breach of duty or damages in lieu of performance against ecomac Gebräuchtmaschinen GmbH, and where such claim is not based on gross fault (intent / gross negligence), this claim for damages shall be limited – beyond the limitation of liability of ecomac Gebräuchtmaschinen GmbH for the typically foreseeable damage (clause VIII.4) – to a maximum amount of 10% of the contract price of delivery. Improper performance shall be deemed to exist where obstacles arise during the contractual relationship, which impede or prevent proper fulfillment of contractual duties or where one party to the contract causes injury to the other party.

6. Limitation of liability of ecomac Gebräuchtmaschinen GmbH for damage caused by delay:

The above limitations of liability in favour of ecomac Gebräuchtmaschinen GmbH with regard to direct and consequential damages (clause VIII.2), ordinary negligence (clause VIII.3), not typically foreseeable damage (clause VIII.4) and improper performance (clause VIII.5) shall also apply to claims for damages of Customer against ecomac Gebräuchtmaschinen GmbH with regard to damage caused by delay, unless such damage is based on gross fault (intent / gross negligence). In excess of the foregoing, in all cases of delayed delivery, including claims both for damages by Customer due to delay of delivery as well as damages in lieu of delivery, and even in such cases where time for delivery may have been extended for ecomac Gebräuchtmaschinen GmbH and has expired, damages shall be limited in their amount to 0.5% per fully completed week of delay – to a maximum of 5% – based on the price of that portion of the delivery, which could not commence operations expeditiously due to such delay.
7. Limitation of liability of ecomac Gebräuchtmaschinen GmbH for persons employed in performing an obligation:

Except where – due to gross fault (intent / gross negligence) of persons employed in performing an obligation – such contractual duties were breached, the fulfillment of which was prerequisite to the proper execution of the contract, any liability for persons employed in performing an obligation (§278 BGB), regardless of legal reason, shall be excluded. In no event shall the liability of ecomac Gebräuchtmaschinen GmbH for a person employed in performing an obligation exceed the liability of ecomac Gebräuchtmaschinen GmbH for its own fault as provided for in the above limitations of liability. According to §278 BGB, a person employed in performing an obligation is a natural person or legal entity whose services the obligor makes use of in order to perform its obligations.
8. Customer's right to rescind the contract due to non-performance or performance not in conformity with the contract shall be excluded. This shall not apply, where ecomac Gebräuchtmaschinen GmbH has intentionally or grossly negligently failed to perform in conformity with the contract.
9. The above limitations of liability (clauses VIII.1 to VIII.8) shall apply neither to claims made pursuant to §1 (and following) of the Product Liability Law, nor to claims based on defects withheld in order to deceive, nor to claims based on the grant of a guarantee regarding a quality, nor to claims based on injury to life, body or health of Customer, his officers and employees, nor to claims based on an obstacle to performance in existence at the time of conclusion of contract, which ecomac Gebräuchtmaschinen GmbH had knowledge of at that time, or is at fault for lacking of such knowledge. The above provisions shall not entail a shift in the burden of proof to Customer's disadvantage.

#### IX. Limitation period

1. Where claims arising due to defects would – by default – be subject to statutory limitation periods of 2 years (e.g. §438 section 1 No. 3 of the BGB; §634a section 1 No. 1 of the BGB), such limitation period shall be shortened to 1 year. Where Customer has claims due to defects which arise from the grant of a guarantee regarding a quality, these claims shall be excluded from such shortening of the limitation period. For all other claims, the statutory limitation periods shall apply.
2. The limitation period shall commence upon delivery of the subject of the contract and in case of an assembly obligation by ecomac Gebräuchtmaschinen GmbH upon completion of the assembly.

Where Customer's acceptance is in default, the limitation period shall commence upon the occurrence of delay in acceptance.

#### X. Software

To the extent that ecomac Gebräuchtmaschinen GmbH provides Customer with software, the following shall apply:

1. ecomac Gebräuchtmaschinen GmbH shall grant Customer a simple right of use pursuant to §31 section 2 of the Copyright Law (UrhRG) regarding the software provided. §31 section 2 of the Copyright Law reads: "The simple right of use entitles the holder thereof to make use of the work besides the author / originator or other persons entitled in the manner allowed to him." Customer shall only be granted a right of use. At all times, ecomac Gebräuchtmaschinen GmbH shall remain the sole owner / holder of all rights over immaterial property regarding the software.
2. Customer shall only be entitled to use the software provided in connection with the subject of the contract.
3. Customer shall not be entitled to receive the source program / source codes.
4. Customer shall be entitled to make use of the software provided for an unlimited period of time for the entire operational life span of the subject of the contract.
5. Customer shall not be entitled to assign its right of use to third parties, in particular Customer shall not be entitled to sell, rent, sub-license or make available the software and the associated documentation to third parties by any other means. Where Customer assigns its complete business enterprise to a third party, Customer shall be entitled to assign its own right of use to such third party. Where Customer sells the complete object delivered to a third party in the normal course of business and such third party is not a competitor of ecomac Gebräuchtmaschinen GmbH, upon request ecomac Gebräuchtmaschinen GmbH shall consent to an assignment of the right of use granted to Customer, unless ecomac Gebräuchtmaschinen GmbH presents reasons for the fact that such action will create the risk of providing competitors of ecomac Gebräuchtmaschinen GmbH with secret knowledge (trade / business secrets) of ecomac Gebräuchtmaschinen GmbH.
6. The right of use of Customer shall be non-exclusive. ecomac Gebräuchtmaschinen GmbH shall be entitled to grant any form of right of use regarding the software provided to any number of other customers.
7. With the exception of staff members, Customer shall not make the software supplied available or accessible to any third party, neither temporarily nor free of charge.
8. Customer shall not change in any manner whatsoever any markings, copyright or ownership notices applied to the software provided.
9. Customer shall not create copies of the supplied software, except that one backup copy may be created by a person entitled to use the program, where this is necessary to secure the future use thereof. The backup copy shall not be used concurrently with the original software.
10. Customer shall not be entitled to photocopy, place on microfilm, electronically duplicate or otherwise copy, whether wholly or partially, the documentation associated with the software.
11. All disassembly, reverse engineering or decompilation of the software shall be prohibited, and Customer shall neither arrange for nor permit the above to be done, except in accordance with the conditions (of §69 e) of the Copyright Law (UrhRG).
12. ecomac Gebräuchtmaschinen GmbH shall be entitled to all proprietary rights, copyrights and other industrial property rights to the software, updates and documentation. The same shall apply to any modifications and translations / compilations of the programs.
13. ecomac Gebräuchtmaschinen GmbH shall be entitled to complete software modifications resulting from protective right claims by third parties at Customer's site and at its own expense. Customer may not derive any claims from this.

#### XI. Place of jurisdiction, applicable law, place of fulfilment

1. Where Customer is a fully qualified merchant registered in a German Commercial Register, a legal entity subject to domestic public law or a trustee of public funds (as respectively defined by §310 BGB), the registered place of business of ecomac Gebräuchtmaschinen GmbH shall be place of jurisdiction for any disputes arising from or in connection with the contractual relationship. In legal proceedings brought against ecomac Gebräuchtmaschinen GmbH by Customer with no domestic place of jurisdiction, the exclusive place of jurisdiction shall also be the registered place of business of ecomac Gebräuchtmaschinen GmbH. In legal proceedings brought by ecomac Gebräuchtmaschinen GmbH against Customer with no domestic place of jurisdiction, the registered place of business of ecomac Gebräuchtmaschinen GmbH shall be a further place of jurisdiction, in addition to the places of jurisdiction provided by law. Any arbitration agreements concluded between the parties shall take precedence.
2. The laws of the Federal Republic of Germany shall apply exclusively both with regard to the applicability of these terms and conditions of ecomac Gebräuchtmaschinen GmbH and to all legal relationships of the contractual parties and their legal successors / assigns, that result from the contract and/or any possible ancillary or subsequent transactions. This choice of law clause as well as the above covenant on jurisdiction shall also be governed by the laws of the Federal Republic of Germany.

The application of the U.N. Law on the Sale of Goods (Convention of the United Nations dated April 11, 1980 relating to contracts on the international sale of goods) shall not be excluded by virtue of the above choice of law.
3. The registered office of ecomac Gebräuchtmaschinen GmbH shall be the place of fulfilment.

Origin of goods: 0 = Third country products, 1 = EG origin, 2 = EFTA origin