

**CONDITIONS OF SALE FOR MACHINES, LINES AND ENGINEERING**  
(from 1 October 2018)

**1. VALIDITY OF PRESENT CONDITIONS OF SALE**

The present conditions of sale regulate the relationship between the employer (named "Client" in the following) and POLYTEC EMC GmbH (named the "Contractor" in the following), provided that no individual agreement (named the "contract" in the following) contains deviations from this whereby non-deviant conditions of these sales conditions shall retain their validity. At the latest as of the beginning of the fulfilment of the contractual obligations by the Contractor, the conditions of sale of the Contractor shall be considered to be recognised by the Client. The purchasing conditions of the Client are only binding for the Contractor, when these are separately recognized by the Contractor. For assembly work in addition the Conditions of Assembly of the Austrian Association for Machinery and Steel Construction shall apply. The contract shall be deemed concluded when the Contractor, after receiving the order, has sent off a written confirmation of order and this is not verifiably contradicted by the Client within 10 days.

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**2. OFFERS**

- 2.1. Our offers are non-binding. Verbal agreements, promises, assurances, guarantees from our employees or any agreements deviating from this conclusion of contract in connection with this conclusion of contract only become binding through our expressly confirming written confirmation of order.
- 2.2. If no contract is achieved, the Contractor is authorised to destroy the documents for the offer (drawings, samples etc.) three months after the day of the offer.

**3. PACKAGING, DISPATCH**

- 3.1. Provided nothing is agreed to the contrary elsewhere, the Contractor has to supply the delivery object EXW „ex works“ according to Incoterms 2010 (readiness to pick up). The transfer of ownership to the Client takes place at the same time as the transfer of risk with preparation for dispatch.
- 3.2. The standards of the Contractor apply to the packing and labelling of deliveries. In the absence of any deviating agreement, the prices indicated do not include packaging and the goods are to be packed in the customary manner to avoid damage to the goods enroute to the place of destination in normal transport conditions, at the expense of the Client and will only be taken back upon agreement.
- 3.3. Insurances relating to the goods sold, in particular insurance for transport, theft, fire and breakages, are not concluded by the Contractor, unless this is agreed separately and expressly.

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**4. PRICE, PAYMENT, INVOICE**

- 4.1. The total price of the contractual obligations of the Contractor, their maturity and payability (named the "contractual price" in the following) are agreed separately.
- 4.2. The amount, type and maturity of the payment surety is agreed separately.
- 4.3. The Client is not authorised, to retain payments due to guarantee claims or any other counterclaims not recognised by the Contractor.
- 4.4. Invoices may be transmitted by electronic means.

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**5. DEADLINE, DEFAULT**

- 5.1. The delivery must be performed in accordance with the delivery dates indicated in the order confirmation, whereby the time of delivery is non-binding.
- 5.2. The schedule for the contractual obligations of the Contractor, e.g. the delivery of the delivery object (in the following named the "delivery object"), begins, however, only after receipt of the payment surety pursuant to Art. 4.2 and the receipt of all of the documents and approvals necessary to fulfil the contract (e.g. the layout, documents) (named the "coming into force" in the following). If the payment surety is not furnished according to Art. 4.2 within 30 days as of the conclusion of the contract, the Contractor can withdraw from the contract without any obligation/liability with regard to the Client.
- 5.3. If the Client delays acceptance due to an infringement of his obligations to cooperate (e.g. approvals, the making available of electricity and water connections etc.) or if the delivery of the delivery object cannot be performed in good time, for reasons which do not fall within the sphere of influence of the Contractor (default of acceptance of client), the Contractor can, after granting an extended deadline, then demand claims for compensation for any additional costs incurred and in the event of storage, storage costs to the tune of at least 0.5% of the invoice amount incurred by the stored machine per month. This regulation does not affect the legal claims.
- 5.4. The Contractor has a claim to payment for all costs/expenses incurred by him in the course of the execution of this contract and which are not included in the payments received.
- 5.5. In the event that the Client is in default with an agreed payment or other service, then at maturity the Contractor can demand default interest at the rate of 7.5 % above the respective base interest rate of the European Central Bank (see guideline on combating default in payment in business transactions, of 29 June 2000). He can also declare his withdrawal from the contract whilst allowing an appropriate period of grace.

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**6. START-UP, PERFORMANCE TESTS, ACCEPTANCE, PERFORMANCE DATA**

- 6.1 Directly once the assembly has ended, the Client and the Contractor must do

everything necessary to allow the operation under load and to be able to perform the performance tests. This time between the end of assembly and acceptance is known as the start-up. The schedule for the start-up is indicated separately.

6.2 Provided that the Client wishes to have an acceptance inspection, this must be expressly agreed with the Contractor in a written form when concluding the contract. Provided that no deviating regulations are agreed, the internal (in-house) acceptance test is to be performed at the place of manufacture respectively at a place determined by the Contractor during the normal working hours of the contractor. In this respect, the general practise of the industrial branch concerned is decisive for this acceptance test. The Client can only demand a repeat of this test in cases of significant defects.

6.3 The schedule for performance tests and test methods is listed separately. Performance tests are carried out by staff members of the Client with contributions from members of staff of the Contractor. If acceptance is carried out at the Client's, then the Client must provide, at his expense, trained and untrained staff and all the raw materials, electricity, gas, air, steam materials, consumables, facilities and infrastructure and other supplies and services, necessary for the performance of the performance tests. The Contractor is authorised to reject the items listed above at any time which he considers to be unsuitable or not compliant. If reasons are furnished, which do not have a negative impact on the performance of the delivery, a refusal is not justified. The performance tests are carried out at the expense of the Client. If the performance data is achieved outside the performance test during the operation of the delivery object, the performance data shall be deemed fulfilled, even if no performance test was carried out. If the performance tests are performed at the factory of the Client, then the Client commits himself to provide respectively take back the auxiliary tools provided (e.g. raw materials, moulds, tools etc.) or to cover the construction or disposal costs for any raw materials not used.

6.4 The acceptance is confirmed by an acceptance certificate signed by one of the parties to the contract. In each of the following cases the acceptance is considered performed: (i) a performance test shows that all the performance data has been fulfilled according to the separate agreement, or (ii) the performance data was reached outside the performance tests during the operation of the delivery object, as this is indicated in Art. 6.3, or (iii) the period of time for the start-up according to Art. 6.1 has expired whereby the Contractor did not have the possibility to perform or repeat the performance tests or if for reasons, for which the Contractor is not responsible, the performance tests could not be successfully completed up till the end of the planned acceptance or within 6 months after the coming into force, whichever falls earlier, or (v) the Client has started up the object of delivery or parts thereof or used the object of delivery or parts of it for other purposes than the start-up.

Following acceptance, the Contractor is released from all his obligations except for the guarantee obligations.

6.5 The signing of the acceptance protocol (or of another performance data protocol) may not be rejected for unreasonable reasons or due to insignificant or smaller deviations from the contract, which do not impair the basic function of the object of delivery. If the acceptance test reveals the contract compliance of the design and the flawless functioning of the object of delivery, then this must be confirmed by both parties to the contract in all cases. If the Client or his authorised representative are not present at the acceptance tests despite being notified in good time by the Contractor, then the acceptance protocol has to only be signed by the Contractor. The Contractor must in all cases give the Client a copy of the acceptance report, the correctness of which the Client can then no longer contest when he or his authorized representative were not able to sign this due to absence.

6.6 The Contractor is, however, not liable when the performance data is not achieved due to circumstances for which the Contractor cannot be held responsible or when deviations from the performance data are not disadvantageous for the Client.

**7. WARRANTY**

7.1.

The Contractor guarantees that the object of delivery, if nothing is provided to the contrary, is manufactured according to the sales conditions and the technical specifications and according to generally recognised industrial standards. The delivery item is in mint condition and free from the rights of third parties, such as e.g. patents or pledges. Apart from the agreement with the technical specification, no warranty or guarantee is assumed for the object of delivery such as for the suitability for a specific purpose. For machines and lines produced according to the specifications (engineering) of the Client, the Client shall exclusively assume the guarantee that the property rights of third parties are not infringed by the production of this machine/line.

7.2.

The Contractor's warranty obligation constitutes the repair or replacement of demonstrably defective delivery items at his discretion within the contractually agreed warranty period. Replacement deliveries must be sent to the same address as the first delivery. For parts that are replaced under warranty, the Client shall have the right to a new warranty period of 6 months from the date of replacement. All these new or extended warranties shall expire 18 months after the first delivery at the latest. Installation and removal costs are not included.

- 7.3. This warranty is granted under the following conditions:  
 (i) The Client has not failed to notify the Contractor in writing immediately after delivery - or immediately after the defect could have been discovered with due care - and  
 (ii) the Client proves that the Contractor is responsible for the defect, whereby § 924 is waived. The warranty obligation of the Contractor shall only apply to defects that occur in compliance with the intended operating conditions and normal use. In particular, it does not apply to defects resulting from natural wear and tear (e.g., seals, hoses, pumps), poor installation by the Client or its agents, poor maintenance, poor repairs or repairs made by the Contractor without the written consent of the Contractor, improper use, damage or alterations by a person other than the Contractor or his representative.
- 7.4. The information contained in catalogues, brochures, circulars, advertisements, illustrations and price lists, etc., concerning weight, dimensions, capacity, price, performance and the like are only relevant if they are expressly referred to in the offer and/or the order confirmation.
- 7.5. If the Contractor returns the defective goods or parts for repairs or replacement, the Client shall bear the costs and risk of transportation, unless otherwise agreed. The repaired or replaced items or parts shall be returned to the Client at the expense and risk of the Contractor, unless otherwise agreed.
- 8. WORKING IN THE CLIENT'S FACTORY**
- The Client and his staff are responsible for compliance with the safety regulations on the construction site, the labour law regulations as well as the local regulations and laws (e.g., environmental regulations). The Client supports the employees of the contractor and grants him the right and the possibility to give instructions to personnel and/or contractual partners of the Client and to enforce them in case of non-compliance. Work which requires the presence of Contractor staff under this contract shall not be carried out in the absence thereof. The Client shall inform the Contractor and its staff of all legal regulations, requirements, ordinances and dispositions which apply to his presence and activities in the country of the Client.
- 9. LIABILITY**
- 9.1. Owing to a breach of contractual or pre-contractual obligations, in particular, owing to impossibility, delay, etc., the Contractor shall be liable only in cases of intent or gross negligence and limited to the contract typical damage foreseeable at the contract up to a max. 5% of the contract value.
- 9.2. Claims for loss of profit, loss of production or earnings, loss of use, interruption of business, loss of orders, loss of information and data, contractual claims of third parties against the Client and any other indirect and/or consequential damages or losses, for whatever legal reason, are excluded, except in the case of gross negligence, intent or personal injury.
- 9.3. The limitations of the Client's liability in terms of or in connection with this agreement shall also apply to the contractor's staff.
- 10. CONFIDENTIALITY, INTELLECTUAL PROPERTY**
- 10.1. The Client hereby agrees to keep all information obtained from the Contractor confidential and not to disclose such information to third parties and not to use it for any purpose other than the installation, operation and maintenance of the specific delivery item, except if the information (i) is generally state of the art or becomes state of the art without the fault on the part of the Client, or (ii) is already in the possession of the Client at the time of acquisition by the Contractor, as evidenced in his written documents, or (iii) the Client obtains such information by a third party without a condition of secrecy, without this third party receiving such information directly or indirectly from the Contractor.
- 10.2. The intellectual property and right of use of the Contractor to engineering, documentation, software, know-how remains without restriction with the Contractor. Without the previous written consent of the Contractor, the documentation provided by the Contractor to the Client may not, in whole or in part, be edited, copied, reproduced, translated into another language, distributed or processed (print, photocopy, microfilm or other process), be it electronic or otherwise. The program source code shall remain in the custody of the Contractor without exception.
- 10.3. Information which is protected by this Article 10 shall not be used with the intention of manufacturing spare parts or replacement parts by the Client himself or by third parties contracted by the Client.
- 10.4. The provisions of this article shall also apply after the expiration or termination of the contract.
- 11. TERMINATION**
- 11.1. The Contractor can terminate this contract in the case of (i) considerable infringements of the contract by the Client, which are not corrected within a suitable period of time despite written requests to do so; or (ii) a marked deterioration in the economic circumstances of the Client.
- 11.2. In the event of termination of the contract on behalf of the Client, the Contractor is entitled to receive the payments to which he is entitled up to the point in time of the termination. In the event of termination without default on the part of the Contractor, the Contractor is entitled to receive from the Client i) the contract price less the costs and expenses not incurred by him, and (ii) to be released from all damages resulting from the termination for which the Contractor is not responsible.
- 11.3. The Contractor is particularly entitled to discontinue the performance of the contract when the Client is in default of payment by more than 30 days.
- 12. JURISDICTION AND APPLICABLE LAW**
- 12.1. The jurisdiction shall be the contractor's registered office.
- 12.2. Austrian material law shall apply (with the exception of the rules concerning conflicts of laws and the Viennese Convention on the International Sale of Goods of 1980).
- 13. MISCELLANEOUS**
- 13.1. The Contractor is not obliged to fulfil the contract when there are obstacles in the way of the fulfilment due to the national or international regulations of foreign trade law, embargos and/or other sanctions. The Contractor must take precise care of all the necessary export licences for his parts of deliveries and services. The Client must support him in this and must provide all the necessary declarations and documents. In case an export license is not granted or not granted in an appropriate time or is revoked, then the Client and the Contractor will agree a replacement solution in a separate agreement. All of the additional costs resulting from this shall be borne by the Client. Claims with regard to the Contractor, due to export licenses not received or received too late or being revoked, are excluded.
- 13.2. Changes to the sales conditions and/or the contract require the written form to be valid and the signature of the Client and Contractor. Any change to the contract and to the contractual obligations of the Contractor necessary due to (i) changes in the law, (ii) changes in standards or (iii) demands from the authorities after signing this contract, is for the account of the Client. In any case, the Client and the Contractor inform each other immediately when changes of this kind become necessary.
- 13.3. Neither of the parties is to be prosecuted in the event of force majeure. For the purposes of this contract, force majeure is defined as an event which could not be prevented by the party to the contract affected by the force majeure and which prevents a party to the contract from fulfilling its obligations in a corresponding manner. Examples of force majeure are war, whether declared or not, unrest, revolution, uprisings, boycotts, governmental actions, the non-issuance or revocation of export-re-export licenses, terrorism, strikes, fire, natural catastrophes including e.g. floods, earthquakes, typhoons etc.. In the event that the performance of the contract is impeded by force majeure for longer than 3 months for an individual period of time, the Contractor has the choice to terminate the contract if the Client does not reimburse the Contractor for any additional costs and expenses he incurs as a result of continuing the performance of the contract. Additional costs for the first 3 months are not subject to a cost refund.
- 13.4. The Client is only entitled to a setoff when the counterclaim was recognised or this was determined in a legally binding way. The Contractor can offset claims vis-à-vis the Client with claims from POLYTEC HOLDING AG and their associated companies.
- 13.5. The Client is only authorised to assign his claims vis-à-vis the Contractor with the prior written agreement of the Contractor.
- 13.6. In the event that individual parts of these conditions of sale become ineffective, this shall not affect the validity of the other parts. Provided that there is an effective part in the ineffective condition, this should be maintained. The parties to the contract agree as of now to find a substitute regulation which comes closest to the economic result of the ineffectual condition.