

# General Terms and Conditions of Performance, Sale and Delivery

## I. Subject of the Contract, Scope, Offer

1. All supplies and services of ecomac Gebrauchtmachines GmbH shall exclusively be effected on the basis of the General Terms and Conditions of Performance, Sale and Delivery of ecomac Gebrauchtmachines GmbH described here. Different conditions of Customer will not be accepted by ecomac Gebrauchtmachines GmbH unless ecomac Gebrauchtmachines GmbH has explicitly consented to their application in writing. These General Terms and Conditions of Performance, Sale and Delivery of ecomac Gebrauchtmachines GmbH shall also apply if ecomac Gebrauchtmachines GmbH – knowing opposed conditions or conditions of Customer deviating from these conditions – completes the delivery to Customer without reservations.
2. The present Terms and Conditions shall apply to all contractual performances of ecomac Gebrauchtmachines GmbH, regardless of the legal type of contract that such performance is based on. Therefore, they shall apply both to sales contracts and to contracts for work, to contracts for delivery of a work and to any combined contract types.
3. Any individual agreements concluded between the parties hereto concerning the rights and duties of these parties shall take precedence over the present Terms and Conditions of Assembly.
4. All agreements entered into between ecomac Gebrauchtmachines GmbH and Customer with regard to performance of the contract shall be made in writing.
5. The present Terms and Conditions shall only apply in relation to merchants, legal entities subject to public law and trustees of public funds (as respectively defined by § 310 BGB).
6. The present Terms and Conditions shall also apply to all future business transactions between ecomac Gebrauchtmachines GmbH and Customer.
7. If an order qualifies as an offer (as defined by § 145 BGB), ecomac Gebrauchtmachines GmbH may accept such offer within four weeks of its receipt.

## II. Documents, Business Secrets, Preparatory Work

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

## III. Time of Delivery, Scope of Delivery, Acceptance, Delay

1. The time agreed for delivery shall commence upon 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 performance owed by ecomac Gebrauchtmachines GmbH shall be deemed to have been effected in due time where the object of contract was duly shipped prior to expiry of the term for delivery, or where Customer was informed of ecomac Gebrauchtmachines GmbH's readiness to make shipment within this term.
3. A default in performance due to force majeure shall not entitle Customer to a claim (in particular, a claim for a contractual penalty or damages) against ecomac Gebrauchtmachines GmbH. Any unforeseeable event or an event, which – though foreseeable – is beyond the influence and control of ecomac Gebrauchtmachines GmbH and the effects of which cannot be avoided by the exercise of reasonable care shall be considered an event of force majeure. Such events include but are not limited to delayed performance by subcontractors/suppliers, acts of war (whether declared or not), war-like conditions, riot, revolution, rebellion, military or civilian coups d'état, insurrection, turmoil, outrages, mobilisation, requisition, blockade, embargo, government order, sabotage, strikes, go-slow strikes, lockout, epidemic diseases, fire, floods, storm tides, typhoons or other poor weather conditions, lack of raw materials and supplies, shipwreck, insufficient loading capacity or port facilities, delays resulting from transportation, loading and discharge, non-availability of freight capacity, justifiable change/exchange of freight forwarder and/or carrier and/or ship owner and/or other commercial shipping 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, where obstacles to performance - regardless of their nature - are not the responsibility of ecomac Gebrauchtmachines GmbH, the latter shall be entitled to receive an extension of time for delivery as well as additional payments to compensate for the additional performance and/or costs.
5. Where shipment is postponed at the request of Customer, Customer shall reimburse the costs actually incurred by the storage of the goods. In case of storage on-site in a plant of ecomac Gebrauchtmachines GmbH, the latter shall be entitled to a lump-sum minimum amount of 0.5 % of the agreed price

for each month as compensation for its additional costs. This stipulation shall not preclude ecomac Gebrauchtmachines GmbH or Customer from furnishing proof of higher or lower costs, respectively.

6. Number 5 also applies to any other case in which the Customer's acceptance is delayed. 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 pass to Customer at the time such default arises.
7. This agreement shall not preclude any further rights that ecomac Gebrauchtmachines GmbH may have.
8. Compliance with the time for delivery shall be subject to Customer duly fulfilling his contractual duties in a timely manner.
9. Partial deliveries by ecomac Gebrauchtmachines GmbH may only be rejected where they impose on Customer in an unreasonable manner.
10. If there must be an acceptance, the subject matter of the contract shall be regarded as having been accepted as soon as
  - 10.1. the delivery and – if ecomac Gebrauchtmachines GmbH also owes the installation – the installation are completed,
  - 10.2. ecomac Gebrauchtmachines GmbH has informed Customer about this fact referring to the assumed acceptance according to this number 10 and has asked them to accept the subject matter,
  - 10.3. two weeks have passed since the delivery or installation or Customer has started to use the purchased object (has e.g. Commissioned the delivered system) and in this case, one week has passed since the delivery or installation, and
  - 10.4. Customer has refrained from the acceptance during this period for any other reason than a defect making the use of the item impossible or materially impairing it, of which ecomac Gebrauchtmachines GmbH has already been informed.

## 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 sales tax applicable at the time of delivery shall be added to the above prices.
2. To the extent that ecomac Gebrauchtmachines GmbH is obliged by German regulations governing packaging 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. To the extent that the packaging taken back cannot be reused, Customer shall bear the costs of the material processing incurred by ecomac Gebrauchtmachines GmbH. In addition, Customer shall pay any duties, clearance charges, taxes and other charges incurred as a result of taking back transport packaging.
3. Containers used for transportation are not within the scope of this contract and are not considered packaging. They shall remain property of ecomac Gebrauchtmachines GmbH. They shall be re-exported by Customer at his expense (shipping costs, duties, clearance charges, taxes and other charges) and risk, and sent back to ecomac Gebrauchtmachines GmbH.
4. Tools, excess material, welding supplies and other auxiliary equipment are not within the scope of this contract. They shall remain property of ecomac Gebrauchtmachines GmbH. They shall be re-exported by Customer at his expense (shipping costs, duties, clearance charges, taxes and other charges) and risk, and sent back to ecomac Gebrauchtmachines GmbH.
5. The price agreed upon shall be due in cash without any deduction.
6. ecomac Gebrauchtmachines GmbH shall be entitled to interest on payments due and in arrears to the extent provided by law. The assertion by ecomac Gebrauchtmachines GmbH of further rights or damages shall not be affected hereby.
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 Gebrauchtmachines GmbH, and ecomac Gebrauchtmachines GmbH was given at least one month's advance notice of such counter-claim.
8. If after conclusion of the contract, ecomac Gebrauchtmachines GmbH learns about circumstances giving rise to doubt regarding the Customer's credit-worthiness, ecomac Gebrauchtmachines GmbH may – at their option – request advance payment or suitable securities.
9. ecomac Gebrauchtmachines 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 Gebrauchtmachines GmbH shall furnish proof for such increases to Customer.
10. ecomac Gebrauchtmachines GmbH shall be entitled to increase the agreed price reasonably if – after the conclusion of contract – Customer requests that the object of contract be modified, and additional expenses and efforts are required for such modifications. Upon request, ecomac Gebrauchtmachines GmbH shall furnish proof of such additional expenses and efforts 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 Gebrauchtmachines GmbH.

## V. Passing of Risk

1. The risk of accidental loss, destruction and accidental deterioration of the object 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 case where ecomac Gebrauchtmachines GmbH itself has assumed additional costs, such as the

cost of shipment or of other services, e.g. transportation, erection or assembly of the object of contract.

2. Where the object 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 pass to Customer on the day the goods are ready for shipment.
3. Where ecomac Gebräuchtmaschinen GmbH arranges for transportation of the object of contract, and damage in transit or a defect due to transportation is caused to the above object after delivery to the carrier, ecomac Gebräuchtmaschinen GmbH shall assign its claims resulting therefrom, if any, against transport insurance(s) 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 object of contract and of all costs owed. Any further claims against ecomac Gebräuchtmaschinen GmbH resulting from any damage in transit or a defect due to transportation shall be excluded. This shall also apply where the scope of contract includes assemblies to be performed or the erection of a turn-key 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 or legal) persons entrusted with the transportation/loading/unloading/storage of the object of contract in their relationship to ecomac Gebräuchtmaschinen GmbH shall apply equally in favour of ecomac Gebräuchtmaschinen GmbH in the contractual relationship between Customer and ecomac Gebräuchtmaschinen GmbH.
5. Customer undertakes to examine the subject of contract or, for partial deliveries, the corresponding parts 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 Gebräuchtmaschinen GmbH immediately of any such existing or suspected defect. If the above obligations are not observed, the transport insurance(s) coverage is voided. Where coverage is voided for such reasons, liability of ecomac Gebräuchtmaschinen GmbH for damage encompassed by the transport insurance(s) exclusion clause shall also be excluded.

#### VI. Retention of Ownership

1. ecomac Gebräuchtmaschinen GmbH shall retain ownership of the object 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 object 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 place of installation (*lex rei sitae*) does not recognise a provision of security by means of retaining ownership, such other means of providing security shall be deemed to have been agreed upon, which – according to the law applicable at the place of installation – comes as close as possible to a “retention of ownership” or which according to that law constitutes 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 place of installation for the creation of a fully enforceable retention of ownership or any other fully enforceable means of providing security.
2. In case of pledging, seizure or other third-party measures in the subject matter of the contract, Customer shall refer to the property of ecomac Gebräuchtmaschinen GmbH and immediately inform ecomac Gebräuchtmaschinen GmbH in writing, handing over the documents necessary for an intervention, so that ecomac Gebräuchtmaschinen GmbH is able to assert their property rights.
3. As long as rights are retained in the object of contract in favour of ecomac Gebräuchtmaschinen GmbH pursuant to the above number 1, ecomac Gebräuchtmaschinen GmbH shall be entitled – after having set a reasonable period – to take back the object of contract delivered in case there has been a breach of duty by Customer, in particular where the ownership of ecomac Gebräuchtmaschinen GmbH of the object of contract is endangered, where the object of contract delivered is improperly used by Customer, or where Customer defaults on payment. The transport costs incurring for the take-back shall be borne by Customer. If ecomac Gebräuchtmaschinen GmbH takes back the subject matter of the contract, this shall constitute a contract rescission. Where Customer does not act on the claim to return the object of contract, the required number of ecomac Gebräuchtmaschinen GmbH's staff shall be irrevocably entitled to enter the place of installation (and/or the construction site/manufacturing plant) of Customer, to disassemble and remove the object of contract delivered; all costs incurring in this connection shall be borne by Customer. Any attachment of the object of contract by ecomac Gebräuchtmaschinen GmbH shall constitute a rescission of contract.
4. Where the object of contract is taken back, ecomac Gebräuchtmaschinen GmbH shall be entitled to resell it; the proceeds of such realisation shall be set off against any liabilities of Customer, while allowing for reasonable costs of realisation.
5. During the retention of title, Customer shall treat the subject matter of the contract carefully and sufficiently insure it at their own expense against damage caused by fire, water and theft at its new value. If maintenance and inspection works become necessary, Customer shall complete them at their own expense in due time.
6. Any processing or transformation of the object of contract by Customer shall always be carried out for and on behalf of ecomac Gebräuchtmaschinen GmbH. Where the object of contract is processed together with other objects not owned by ecomac Gebräuchtmaschinen GmbH, ecomac Gebräuchtmaschinen

GmbH shall acquire co-ownership of the new corporeal object in the proportion of the value of the object of contract (invoice amount) to the other processed objects at the time of processing. The provisions regarding reserved rights applicable to the object of contract shall apply accordingly to the corporeal object resulting from processing.

7. Where the subject of contract is, in whole or in part, inseparably commingled or combined with other subjects not owned by ecomac Gebräuchtmaschinen GmbH, ecomac Gebräuchtmaschinen GmbH shall acquire title to the new item in the proportion of the value of the subject of contract (invoice amount) to the other commingled or combined objects at the time of commingling or combination. If connection or commingling takes place in such a way that Customer's corporeal object is to be considered the principal object, a transfer of co-ownership by Customer to ecomac Gebräuchtmaschinen 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 Gebräuchtmaschinen GmbH.
8. As security for the claim of ecomac Gebräuchtmaschinen GmbH against Customer, Customer shall assign to ecomac Gebräuchtmaschinen GmbH any claims accruing to Customer against any third party as a result of connecting the object of contract with real estate.
9. ecomac Gebräuchtmaschinen GmbH undertakes to release the securities it is entitled to at the request of Customer, to the extent that the value of realisable securities of ecomac Gebräuchtmaschinen GmbH exceeds the secured claims by more than 20 %; the selection of the securities to be released shall be at the discretion of ecomac Gebräuchtmaschinen GmbH.

#### VII. Rights of Customer in Case of Defects

1. ecomac Gebräuchtmaschinen GmbH shall not be held liable for defects or damage arising from:
  - Defects resulting from constructions prescribed or specified by Customer, defects resulting from materials (including sample materials) prescribed, specified or supplied by Customer, or defect resulting from other input of Customer.
  - Defects or damage arising after the passing of risk due to faulty or negligent treatment, operating by untrained staff, excessive use, inappropriate exchange materials, faulty construction work, inappropriate site or such defects arising due to special external circumstances not envisioned by the contract, as well as non-repeatable software errors.
  - Where Customer or third parties apply unsuitable modifications or maintenance work, any liability of ecomac Gebräuchtmaschinen GmbH for these modifications, work or their consequences shall be excluded.
2. ecomac Gebräuchtmaschinen GmbH shall not be liable for wearing parts (definition to follow) of the object 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 subject of contract is, in whole or in part, a product delivered by a third party, the liability of ecomac Gebräuchtmaschinen 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, in whole or in part, an item that has not expressly been offered by ecomac Gebräuchtmaschinen GmbH as “used”, the following shall apply:
  - (a) ecomac Gebräuchtmaschinen GmbH shall be liable to Customer that the object of contract at the time of the passing of risk to Customer is free of physical and legal defects. Irrelevant deviations from qualities agreed upon shall not constitute defects. Standard deviations or deviations which are based on legal provisions or constitute technical improvements as well as the replacement of components by equivalent parts shall also be admissible unless they impair the usability for the contractually intended purpose.
  - (b) Where a defect in the subject of contract, in whole or in part, gives rise (while taking in account numbers 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 shall be 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 object of contract, Customer shall have the right to choose between correction of defects and replacement delivery. The costs necessary for the purpose of remedial performance 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 case, ecomac Gebräuchtmaschinen GmbH's obligation to provide remedial performance with regard to the defective part shall be deemed to

have been completely fulfilled if ecomac Gebrauchtmachines GmbH returns the duly repaired part or sends a corresponding replacement part to Customer. Where costs have increased due to the object 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 performance, in particular costs due to transportation and infrastructure, labour and material, shall be excluded.

- (d) Where Customer does not accept the remedial performance offered by ecomac Gebrauchtmachines GmbH pursuant to the contract, upon fruitless expiry of an extension of time allotted ecomac Gebrauchtmachines GmbH shall be released from liability for the claimed defect.
- (e) Where remedial performance has failed, Customer shall be entitled – subject to the conditions contractually agreed upon, including those provided for by the present Terms and Conditions of Performance, Sale and Delivery of ecomac Gebrauchtmachines GmbH – to make any other claims based on the defect. In particular, failure of remedial performance shall be established, where ecomac Gebrauchtmachines GmbH has allowed a reasonable extension of time allotted by Customer to pass fruitlessly, or has unduly delayed or refused remedial performance, or where a reasonable number of attempts at remedial performance have been unsuccessful.
- (f) ecomac Gebrauchtmachines GmbH can refuse to remedy the defect if the Customer does not comply with the agreed payment obligations. 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 Gebrauchtmachines GmbH, that the claim based on defect made by Customer is unwarranted for factual or legal reasons, ecomac Gebrauchtmachines 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, in whole or in part, a product that has been expressly offered by ecomac Gebrauchtmachines GmbH as “used”, but without any prior reconditioning of the subject of the contract indicated by a note from ecomac Gebrauchtmachines 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 Gebrauchtmachines GmbH arises due to ecomac Gebrauchtmachines 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, in whole or in part, a product that has been expressly offered by ecomac Gebrauchtmachines GmbH as “used”, and with prior reconditioning of the subject of the contract indicated by a note from ecomac Gebrauchtmachines GmbH (such as “factory reconditioned”), 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 Gebrauchtmachines 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 defective 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 Customer's claims for defects are due to ecomac Gebrauchtmachines 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 under numbers 6a to 6c 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 Liability of ecomac Gebrauchtmachines GmbH

1. Customer shall carefully observe both the instructions for use and the operating instructions, as well as the safety information provided by ecomac Gebrauchtmachines GmbH. In particular, Customer shall comply with the instructions of ecomac Gebrauchtmachines GmbH on how the object of contract is to be used without risk, which precautions are to be taken regularly and individually, and which types of errors in usage are to be avoided. If Customer breaches this duty, ecomac Gebrauchtmachines GmbH shall not be liable for any damage resulting therefrom.
2. Limitation of liability of ecomac Gebrauchtmachines GmbH for damage, both direct and consequential, resulting from defects: ecomac Gebrauchtmachines 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 Gebrauchtmachines GmbH for ordinary (as opposed to gross) negligence: Any claims of Customer, regardless of legal reason, for damages not based on gross fault (intent/gross negligence) on the part of ecomac Gebrauchtmachines GmbH shall be excluded, unless the damage is due to the presence of a defect or the breach of material contractual duties the fulfilment of which is a prerequisite to the proper execution of the contract and on compliance

with which Customer has regularly relied and may also rely (so-called “cardinal duties”).

4. Limitation of liability of ecomac Gebrauchtmachines GmbH for not typically foreseeable damage: Unless any claims for damages by Customer are already excluded due to the limitations of liability of ecomac Gebrauchtmachines GmbH for direct and consequential damage (number 2) and for ordinary negligence (number 3), where such claims – regardless of legal reason – are not based on gross fault (intent/gross negligence) on the part of ecomac Gebrauchtmachines GmbH, such claims shall be limited in their amount to compensation for such damage which ecomac Gebrauchtmachines GmbH, taking into consideration the circumstances that ecomac Gebrauchtmachines 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 Gebrauchtmachines GmbH for improper performance: Unless a claim by Customer has already been excluded due to the limitations of liability in favour of ecomac Gebrauchtmachines GmbH with regard to direct or consequential damages (number 2) and for ordinary negligence (number 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 Gebrauchtmachines 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 Gebrauchtmachines GmbH for the typically foreseeable damage (number 4) – to a maximum amount of 10 % of the contract price of machinery delivered. Improper performance shall be deemed to exist where obstacles arise during the contractual relationship, which impede or prevent proper fulfilment of contractual duties or where one party to the contract causes injury to the other party.
  6. Limitation of liability of ecomac Gebrauchtmachines GmbH for damage caused by delay: The above limitations of liability in favour of ecomac Gebrauchtmachines GmbH with regard to direct and consequential damages (number 2), ordinary negligence (number 3), not typically foreseeable damage (number 4) and improper performance (number 5) shall also apply to claims for damages of Customer against ecomac Gebrauchtmachines 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 cases where time for delivery may have been extended for ecomac Gebrauchtmachines 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 Gebrauchtmachines GmbH for persons employed in performing an obligation: Except where – due to gross fault (wilful intent / gross negligence) of persons employed in performing an obligation – such contractual duties were breached, the fulfilment of which was prerequisite to the proper execution of the contract, any liability for persons employed in performing an obligation (section 278 BGB), regardless of the legal reason, shall be excluded. In no event shall the liability of ecomac Gebrauchtmachines GmbH for a person employed in performing an obligation exceed the liability of ecomac Gebrauchtmachines 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. Withdrawal of Customer from the contract due to services not provided, or not provided in accordance with the contract, by ecomac Gebrauchtmachines GmbH shall be excluded. This shall not apply, where ecomac Gebrauchtmachines GmbH has intentionally or grossly negligently failed to perform in conformity with the contract.
  9. The preceding limitations of liability (number 1 to number 8) shall not apply to claims of Customer due to intentional or grossly negligent behaviour, to guaranteed characteristics, due to injuries to life, body or health or according to the Product Liability Act.
  10. In cases where the freight forwarder is arranged for by the Customer, ecomac Gebrauchtmachines GmbH will not be held liable for any costs incurred as a result of additional security checks or time delays occasioned by the requirements of the German Aviation Security Act and the EU regulations (EC No. 300/2008; (EC) No. 185/2010; (EC) No. 173/2012; (EC) No. 272/2009 or any other current national or international statutory provisions. The Customer agrees, on ecomac Gebrauchtmachines GmbH's first demand, to indemnify and hold ecomac Gebrauchtmachines GmbH harmless from any costs or damages to the extent that such costs or damages are incurred as a result said of additional security checks as well as any ensuing time delays.
- #### IX. Limitation Period
1. Where claims arising due to defects would – by default – be subject to statutory limitation periods of two years (e.g. § 438 s.1 no. 3 BGB; § 634 s.1 no.1 BGB), such limitation period shall be shortened to one 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 object of contract and in case of an assembly obligation by ecomac Gebrauchtmaschinen GmbH upon completion of the assembly.
  3. Where Customer's acceptance is in delay, the limitation period shall commence upon the occurrence of delay in acceptance.
- X. Software**  
To the extent that ecomac Gebrauchtmaschinen GmbH provides Customer with software, the following shall apply:
1. ecomac Gebrauchtmaschinen GmbH shall grant Customer a simple right of use pursuant to § 31 s. 2 of the Copyright Law (UrhG) regarding the software provided. § 31 s. 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." With regard to the software, ecomac Gebrauchtmaschinen GmbH shall remain the sole owner/holder of the intellectual property rights at any time.
  2. Customer shall only be entitled to use the software provided in connection with the object of 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 object of 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-licence 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 Gebrauchtmaschinen GmbH, upon request ecomac Gebrauchtmaschinen GmbH shall consent to an assignment of the right of use granted to Customer, unless ecomac Gebrauchtmaschinen GmbH presents reasons for the fact that such action will create the risk of providing competitors of ecomac Gebrauchtmaschinen GmbH with secret knowledge (trade/business secrets) of ecomac Gebrauchtmaschinen GmbH.
  6. The right of use of Customer shall be non-exclusive. ecomac Gebrauchtmaschinen 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. Any 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 (UrhG).
  12. ecomac Gebrauchtmaschinen 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 Gebrauchtmaschinen GmbH is entitled to carry out, at its own expense, any alterations to the software installed at Customer's premises which may be necessary due to the assertion of proprietary rights by third parties. Customer cannot derive any rights from this.
- XI. Data Protection**  
ecomac Gebrauchtmaschinen GmbH processes personal data according to the provisions of the European General Data Protection Regulation (GDPR) and the German Federal Data Protection Act (BDSG). For more information regarding the handling of customer data at ecomac Gebrauchtmaschinen GmbH, please refer to [www.ecomac.de](http://www.ecomac.de). Customer is obliged to comply with all applicable data protection regulations.
- XII. Place of Jurisdiction, Applicable Law, Place of Performance, Severability Clause**
1. Where Customer is a domestic merchant, a domestic legal entity under public law or a domestic special fund under public law, the registered office of ecomac Gebrauchtmaschinen GmbH shall be the place of exclusive jurisdiction for all disputes arising from and in connection with the contractual relationship. In legal proceedings brought against ecomac Gebrauchtmaschinen GmbH by Customer with no domestic place of jurisdiction, the exclusive place of jurisdiction shall also be the registered place of business of ecomac Gebrauchtmaschinen GmbH. In legal proceedings brought by ecomac Gebrauchtmaschinen GmbH against Customer with no domestic place of jurisdiction, the registered place of business of ecomac Gebrauchtmaschinen 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 the present Terms and Conditions of Performance, Sale and Delivery of ecomac Gebrauchtmaschinen 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. The present 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 Gebrauchtmaschinen GmbH shall be the place of performance.
  4. Should the contract or any one of the above provisions of these General Terms of Performance, Sale or Delivery of ecomac Gebrauchtmaschinen GmbH be or become invalid or unenforceable, this shall not affect the validity of the remaining provisions. The contracting parties undertake to co-operate in good faith to replace the invalid or ineffective provision with a legally enforceable and valid provision suited to achieve the success at which the invalid provision was aimed. The same applies to the closure of any contractual loopholes or omissions.
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- Origin of goods (USP):  
O = Third-country products 1 = EU origin 2 = EFTA origin