

I. Terms of a Contract, Scope of Application, Offer

1. All deliveries and services of ecomac Gebrauchtmachines GmbH are provided exclusively on the basis of the General Terms and Conditions of Performance, Sale and Delivery of ecomac Gebrauchtmachines GmbH described here. Any deviating terms and conditions of the Customer shall not be recognised by ecomac Gebrauchtmachines GmbH unless ecomac Gebrauchtmachines GmbH has expressly agreed to their validity 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 Terms and Conditions – completes the delivery to Customer without reservations.
2. These Terms and Conditions shall apply to all 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.
4. All agreements entered into between ecomac Gebrauchtmachines GmbH and Customer with regard to performance of the contract shall be made in writing.
5. These present Terms and Conditions shall only apply in relation to entrepreneurs, legal persons and/or special funds under public law (as defined in section 310 BGB [German Civil Code]).
6. These Terms and Conditions shall also apply to all future business transactions between ecomac Gebrauchtmachines GmbH and the Customer.
7. If an order can be legally qualified as an offer (as defined by section 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. They shall not be made accessible to third parties without the written consent of ecomac Gebrauchtmachines GmbH. Any documents designated as confidential by Customer shall not be made accessible to third parties by ecomac Gebrauchtmachines GmbH without the Customer's written consent. Documents supplied by ecomac Gebrauchtmachines GmbH shall be used solely to prepare the conclusion of the contract, and, thereafter, to execute such contract. Any other use is prohibited.
2. Customer shall not disclose to third parties any business secrets of ecomac Gebrauchtmachines GmbH or of its associated companies (as defined by section 15 of the Aktiengesetz [German Stock Corporation Act]), which Customer has received knowledge of. ecomac Gebrauchtmachines GmbH shall not disclose to third parties any business secrets of Customer or its associated companies (as defined by section 15 of the Aktiengesetz [German Stock Corporation Act]), which ecomac Gebrauchtmachines GmbH has received knowledge of.
3. Both, ecomac Gebrauchtmachines GmbH and the Customer shall use adequate means to ensure that their executive bodies and employees will also comply with the above obligations.

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

1. The time for delivery shall commence upon dispatch of the order confirmation and clarification of all technical questions, provided that Customer has supplied all plans, documents, approvals, releases and permits to be made available by them, 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 time for delivery, or where Customer was informed of the 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 efforts by ecomac Gebrauchtmachines GmbH 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, blockade, embargo, government order, sabotage, strikes, go-slow strikes, lockout, epidemic diseases, fire, floods, storm tides, typhoons or other severe weather conditions, general lack of raw materials and supplies, shipwreck, insufficient port facilities and unloading capacity, delays resulting from transportation, 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 their responsibility, ecomac Gebrauchtmachines GmbH shall be entitled to demand a reasonable extension of time for delivery as well as additional payments to compensate for the additional performance and/or costs from Customer.
5. Where shipment is postponed at the request of Customer, Customer shall reimburse the costs actually incurred by the storage of the object of contract. In

case of storage 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 to cooperate, the risk of accidental loss, destruction or accidental deterioration of the object of contract shall pass to Customer at the time such default arises.
7. More far-reaching rights of ecomac Gebrauchtmachines GmbH are not excluded by this agreement.
8. Compliance with the time for delivery shall be subject to Customer duly fulfilling its contractual duties in a timely manner.
9. Partial deliveries by ecomac Gebrauchtmachines GmbH may only be rejected if they are unreasonable for the Customer.
10. If there must be an acceptance, the object of 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 for Customer's acceptance,
 - 10.3. two weeks have passed since the delivery or installation or the Customer has started to use the purchased object (for example commissioned the line delivered) and in this case, one week has passed since the delivery or installation, and
 - 10.4. Customer has failed to accept the object of contract 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 the Verpackungsverordnung [German Packing Ordinance] to take back packaging used for transportation, Customer shall bear the costs of returning the used packaging and the reasonable costs for its recycling. 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, the 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 included in the scope of this contract and are not considered packaging. They shall remain the property of ecomac Gebrauchtmachines GmbH. They shall be imported, re-exported and sent back to ecomac Gebrauchtmachines GmbH by Customer at Customer's expense (shipping costs, duties, clearance charges, taxes and other charges) and risk.
4. Tools, excess material, welding supplies and other auxiliary equipment are not within the scope of this contract. They shall remain the property of ecomac Gebrauchtmachines GmbH. They shall be imported, re-exported and sent back to ecomac Gebrauchtmachines GmbH by Customer at Customer's expense (shipping costs, duties, clearance charges, taxes and other charges) and risk.
5. Customer shall credit the agreed price to one of the bank accounts specified by ecomac Gebrauchtmachines GmbH strictly net at its own risk and expense.
6. ecomac Gebrauchtmachines GmbH shall be entitled to interest on payments due and in arrears to the extent provided by law. A potential assertion of further damages and rights of ecomac Gebrauchtmachines GmbH shall not be affected hereby.
7. Customer shall not be entitled to any rights of set-off and retention, unless its 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 Customer's creditworthiness, ecomac Gebrauchtmachines GmbH may – at its discretion – request advance payment or suitable securities.
9. ecomac Gebrauchtmachines GmbH shall be entitled to increase the agreed price appropriately if cost increases occur after conclusion of the contract, in particular due to collective wage agreements, material price increases or the increase of transport and packaging costs. ecomac Gebrauchtmachines GmbH will provide evidence thereof to Customer upon request.
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. ecomac Gebrauchtmachines GmbH will provide evidence of the additional expenses to the Customer upon request.

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 agreed price 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, bar periods, exclusions of liability and limitations of liability under transport or maritime law 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 inspect the subject matter of the contract or, in the case of partial deliveries, the corresponding parts thereof for damage immediately upon unloading at the port of destination and, in the event of the existence or suspicion of damage, to acknowledge receipt only with reservation and to notify ecomac Gebräuchtmaschinen GmbH of the damage without delay. 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 its 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 its 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 its 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. If the subject matter of the contract or part thereof is inseparably combined or mixed with other items not belonging to ecomac Gebräuchtmaschinen GmbH, ecomac Gebräuchtmaschinen GmbH shall acquire ownership of the new item in proportion to the value of the subject matter of the contract (invoice amount) to the other combined or mixed items at the time of combination or mixing. 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. Customer shall hold the sole ownership or co-ownership thus created in safe custody 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 defects resulting from other provisions by Customer.
Defects or damage arising after the passing of risk due to faulty or negligent treatment, operating by untrained staff, excessive use, unsuitable operating materials, faulty construction work, unsuitable foundation or such defects arising due to special external influences not stipulated in the contract, as well as non-reproducible software errors.
Where Customer or third parties undertake inappropriate 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 follows) of the subject matter of the contract either. Wear is the progressive loss of material from the surface of a solid object induced by mechanical causes such as contact and relative motion of another solid, fluid or gaseous object.
A wear part is a part that is used in places which unavoidably experience wear for operational reasons in order to protect other elements under consideration from wear, and which, by design, is intended for replacement.
3. If the subject matter of the contract or a part thereof is a product supplied by a third party, ecomac Gebräuchtmaschinen GmbH's liability shall initially be limited to the assignment of the liability claims to which ecomac Gebräuchtmaschinen GmbH is entitled against the 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 matter of the contract or a part thereof is an item that was not expressly offered by ecomac Gebräuchtmaschinen GmbH as “used”, the following shall apply:
 - 4.1. ecomac Gebräuchtmaschinen GmbH shall be liable to Customer for the object of contract being free of physical and legal defects at the time risk passes to Customer. 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.
 - 4.2. Where a defect in the object of contract or a part thereof 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 performance 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 object of contract, Customer shall have the right to choose between correction of defects and replacement delivery. The expenses required for cure shall be borne by ecomac Gebräuchtmaschinen GmbH. Replaced parts shall become the property of ecomac Gebräuchtmaschinen GmbH.
 - 4.3. Unless the defect requires repair at the place of installation, Customer shall send the defective parts to ecomac Gebräuchtmaschinen GmbH for repair or replacement at ecomac Gebräuchtmaschinen GmbH's request and at ecomac Gebräuchtmaschinen GmbH's expense.
In such case, ecomac Gebräuchtmaschinen GmbH's obligation to provide cure with regard to the defective part shall be deemed to have been completely

fulfilled once ecomac Gebrauchtmachines GmbH returns the duly repaired part or sends a suitable replacement part to Customer.

Where costs have increased due to the object of delivery 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, including, but not limited to, costs due to transportation and infrastructure, labour and material, shall be excluded.

- 4.4. Where Customer does not accept the cure offered by ecomac Gebrauchtmachines GmbH under the contract, ecomac Gebrauchtmachines GmbH shall be released from liability for the claimed defect after additional time has been set and expired without result.
- 4.5. Where cure has failed, Customer shall be entitled – subject to the conditions contractually agreed upon, including those resulting from the present General Terms and Conditions of Performance, Sale and Delivery of ecomac Gebrauchtmachines GmbH – to assert its other claims for defects. In particular, cure shall be deemed to have failed, where ecomac Gebrauchtmachines GmbH has allowed reasonable additional time set by Customer to expire without result, or has unduly delayed or refused cure, or where a reasonable number of attempts at cure have been unsuccessful.
- 4.6. ecomac Gebrauchtmachines GmbH may refuse to remedy a defect, if Customer does not make payment as agreed upon. Customer shall only be entitled to retain payments for cause where a notice of defect is asserted which is justified beyond all doubt. This right of retention shall be limited in its amount to four times the costs necessary to remedy 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 matter of the contract or a part thereof is an item that was expressly offered by ecomac Gebrauchtmachines GmbH as “used” but without an addendum indicating that the subject matter of the contract had previously been overhauled by ecomac Gebrauchtmachines GmbH (such as “factory reconditioned”), any claims on the part of the Customer due to the existence of a material defect shall be excluded. This exclusion of liability shall not apply if ecomac Gebrauchtmachines GmbH's liability is based on the fact that ecomac Gebrauchtmachines GmbH has fraudulently concealed a defect or has given a guarantee for the quality of the subject matter of the contract.
6. If the subject matter of the contract or a part thereof is an item that has been expressly offered by ecomac Gebrauchtmachines GmbH as “used” and with an addendum indicating a previous overhaul by ecomac Gebrauchtmachines GmbH (such as “factory reconditioned”), the following shall apply:
- 6.1. Customer shall initially only have the right to demand rectification of the defect (subsequent improvement).
- 6.2. In the event of proof of failure of the rectification, Customer shall be entitled to demand reimbursement of the costs for rectification elsewhere. Rectification shall particularly be deemed to have failed if ecomac Gebrauchtmachines GmbH allows a reasonable period of time set by the Customer for rectification to elapse to no avail or if ecomac Gebrauchtmachines GmbH unduly delays or refuses rectification or if a reasonable number of attempts at rectification have not been successful.
- 6.3. If the defective subject matter of the contract turns out not to be capable of being repaired, Customer may only withdraw from the contract if the subject matter of the contract is not suitable for normal use due to the defect. If the Customer's claims for defects are based on the fact that ecomac Gebrauchtmachines GmbH has fraudulently concealed a defect or has given a guarantee for the quality of the subject matter of the contract, the restrictions on the Customer's rights in respect of defects set out in 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 misuse are to be avoided. If Customer breaches this duty, ecomac Gebrauchtmachines GmbH shall not be liable for any damage resulting therefrom.
2. The limitation of liability of ecomac Gebrauchtmachines GmbH in the event of damage caused by defects and consequential damage caused by defects: ecomac Gebrauchtmachines GmbH shall neither be liable for any direct damage resulting from defects (including damage consisting of lost profit) nor for consequential damage resulting from defects, regardless of the legal ground. This exclusion of liability shall not apply to claims by Customer for damage based on gross fault (intent/gross negligence).
3. The limitation of liability of ecomac Gebrauchtmachines GmbH in the event of simple/slight negligence:
Any claims of Customer, regardless of the legal ground, for damages not arising from 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 the compliance

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

4. The limitation of liability of ecomac Gebrauchtmachines GmbH for damage that is not typically foreseeable:
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. The limitation of liability of ecomac Gebrauchtmachines GmbH in the event of default:
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 agreed price. Improper performance shall be deemed to exist where obstacles arise during the contractual relationship that impede or prevent proper fulfilment of contractual duties or where one party to the contract causes injury to the other party.
 6. The limitation of liability of ecomac Gebrauchtmachines GmbH in the event of 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 deliveries, which could not commence operations expediently due to such delay.
 7. The limitation of liability of ecomac Gebrauchtmachines GmbH for their persons used to perform an obligation:
Except where – due to gross fault (intent/gross negligence) of the person used to perform an obligation – such contractual duties were breached, the fulfilment of which was prerequisite to the proper execution of the contract, any liability for persons used to perform obligations (section 278 BGB [German Civil Code]) of ecomac Gebrauchtmachines GmbH shall be excluded regardless of the legal ground. In no event shall the liability of ecomac Gebrauchtmachines GmbH for a person used to perform an obligation exceed the liability of ecomac Gebrauchtmachines GmbH for its own fault as provided for in the above limitations of liability. According to section 278 BGB [German Civil Code], a person used to perform an obligation is a natural person or legal entity whose services the obligor uses in order to fulfil 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 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. Customer shall indemnify ecomac Gebrauchtmachines GmbH on first demand from all costs and losses resulting from additional security inspections and related time delays in this respect.
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1. Where claims arising due to defects would – by default – be subject to statutory limitation periods of two years (e.g. section 438 s. 1 no. 3 BGB; section 634 a 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 periods. 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 Gebrauchtmachines GmbH upon completion of the assembly.
3. Where the Customer's acceptance is in delay, the limitation period shall commence upon the occurrence of delay in acceptance.

X. Software

Insofar as ecomac Gebrauchtmachines GmbH provides the Customer with software, the following shall apply:

1. ecomac Gebrauchtmachines GmbH shall grant Customer a simple right of use pursuant to section 31 s. 2 of the Copyright Law (UrhRG) regarding the software provided. Section 31, s. 2 of the German Copyright Act 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 Gebrauchtmachines 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 hand-over of the source program/source code.
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, the 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 the Customer assigns its complete business enterprise to a third party, the Customer shall be entitled to assign its own right of use to such a third party. If the Customer sells the delivery item as a whole to a third party in the normal course of business and if this third party is not a competitor of ecomac Gebrauchtmachines GmbH, ecomac Gebrauchtmachines GmbH is obliged to agree to the transfer of the right of use granted on request, unless ecomac Gebrauchtmachines GmbH can justifiably demonstrate that there is a risk that competitors of ecomac Gebrauchtmachines GmbH will gain knowledge of secret knowledge (business secret knowledge (business secrets) of ecomac Gebrauchtmachines GmbH.
6. The right of use of the Customer shall be non-exclusive. ecomac Gebrauchtmachines 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, the Customer shall not make the software supplied available or accessible to any third party, neither temporarily nor free of charge.
8. The Customer shall not change in any manner whatsoever any markings, copyright or ownership notices applied to the software provided.
9. The Customer shall not create copies of the software supplied, with the exception 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. The 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 the Customer shall neither arrange for nor permit the above to be done, except in accordance with the conditions of section 69e of the German Copyright Act (UrhRG).
12. ecomac Gebrauchtmachines 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 Gebrauchtmachines GmbH is entitled to carry out, at its own expense, any alterations to the software installed at the 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

1. ecomac Gebrauchtmachines 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 Gebrauchtmachines GmbH, please refer to www.ecomac.de. Customer is obliged to comply with all applicable data protection regulations.
2. ecomac Gebrauchtmachines GmbH is entitled to collect, store, process and evaluate machine data and duly anonymized personal data. Such data can also be disclosed to ecomac Gebrauchtmachines GmbH associated companies for the purpose of using such data for product improvement, performance enhancement applications and other services of ecomac Gebrauchtmachines GmbH and/or their associated companies.
3. ecomac Gebrauchtmachines GmbH is entitled to transmit customer data to third parties (including associated companies of ecomac Gebrauchtmachines GmbH) if and to the extent that this is required for the implementation of pre-contractual measures and for the contractual agreed supplies and services (e.g. for dispatch, invoicing or customer support), or to fulfil statutory obligations.

XII. Place of Jurisdiction, Applicable Law, Place of Performance, Severability Clause

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, the registered place of business of ecomac Gebrauchtmachines GmbH shall be place of jurisdiction for any disputes arising from or

in connection with the contractual relationship. For legal action against ecomac Gebrauchtmachines GmbH by customers who do not have a general place of jurisdiction in the Federal Republic of Germany, the exclusive place of jurisdiction shall also be the registered office of ecomac Gebrauchtmachines GmbH. In legal proceedings brought by ecomac Gebrauchtmachines GmbH against Customers with no general place of jurisdiction in the Federal Republic of Germany, the registered place of business of ecomac Gebrauchtmachines GmbH shall be a further place of jurisdiction, in addition to the places of jurisdiction provided by law. Any arbitration agreements made between the parties take precedence.

2. The laws of the Federal Republic of Germany shall apply exclusively both with regard to the applicability of these General Terms and Conditions of Performance, Sale and Delivery of ecomac Gebrauchtmachines 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 and the agreement on jurisdiction above shall likewise be governed by the law of the Federal Republic of Germany. The above choice of law shall not exclude application of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980.
3. The place of performance is the registered office of ecomac Gebrauchtmachines GmbH.
4. Should the contract or any one of the above provisions of these General Terms and Conditions of Performance, Sale and Delivery of ecomac Gebrauchtmachines GmbH be or become invalid or unenforceable, this shall not affect the validity of the remaining provisions. The contracting parties shall rather cooperate to replace the ineffective provision by a legally admissible and effective 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.

Origin of goods (USP):

O = Third country products 1 = EU-origin 2 = EFTA-origin