

# Special Terms and Conditions concerning Liability for Defects and Secondary Contractual Obligations for the Delivery of Unused Machines

(Status: January 1999)

In addition to the General Terms and Conditions of ProdEq Trading GmbH (Status: January 1999), the following Special Terms and Conditions shall apply to the liability for defects as well as to the liability for violations of secondary contractual obligations by the supplier for deliveries of unused machines by ProdEq Trading GmbH (supplier) which the latter has either obtained directly from the manufacturer or as unused machines second-hand.

## 1. Liability for defects of unused machines

The following provisions shall apply to defects or the lack of warranted qualities at delivery:

- a) The supplier, at his reasonable discretion, shall repair or replace free of charge all parts which turn out to be unusable or considerably impaired in their functionality within 6 months after commissioning due to a circumstance that occurred before the passing of the risk – in particular due to faulty design, bad materials or poor workmanship. When such defects are discovered, the supplier must immediately be informed in writing. Replaced parts shall become the property of the supplier. In case of a postponed delivery, installation or commissioning beyond the supplier's control, the liability shall expire 12 months after passing of the risk at the latest. For essential third-party products, the liability of the supplier shall be limited to the assignment of the liability claims to which he is entitled against the supplier of the third-party product.
- b) The ordering's party right to assert claims for defects shall expire, in all cases, 6 months after a timely notification of defects, at the earliest however with the expiry of the warranty period.
- c) No warranty is given for damages resulting from one of the following reasons: Improper or inappropriate use, faulty assembly or commissioning by the ordering party or a third party, natural wear, incorrect or negligent treatment, inappropriate equipment, exchange materials, incorrect construction works, unsuitable ground, chemical/electrochemical or electrical influences unless they are due to a fault of the supplier.
- d) Upon consultation with the supplier, the ordering party shall grant the necessary time and opportunity for carrying out the repair works and replacement deliveries the supplier deems necessary at his reasonable discretion, otherwise the supplier shall be exempted from his liability for defects. Only in urgent cases when the operational safety is in danger or when a disproportionately serious damage must be prevented - in these cases the supplier must be informed immediately - or when the supplier is in delay with remedying the defect shall the ordering party be entitled to remedy the defect itself or have it remedied by a third party or to demand reimbursement of the required expenses.
- e) From the direct costs arising in connection with the repair works and/or replacement deliveries, the supplier – if the complaint turns out to be justified - shall cover the costs for the replacement part including the dispatch expenses as well as the appropriate costs for disassembly and assembly, and, if this can be reasonably requested in the individual case, the costs for providing his technicians and assistant workers as required. All other expenses shall be borne by ordering party.
- f) The warranty period for the replacement part and the repair shall be 3 months, at least however until the original warranty period for the delivery item expires. The period for the liability for defects concerning the delivery item shall be extended by the duration of the temporary cessation of work caused by the repair works.
- g) If the ordering party or a third party has made any modification or repair works in an inappropriate way and without the supplier's consent, the supplier shall not be liable for any damage that might arise as a consequence thereof.
- h) The disclaimer of liability shall not apply to cases where there is a liability under the Product Liability Law for personal injury or damage to property in privately used objects caused by faults of the delivery item. Neither shall it be applicable to cases where there is a lack of qualities that were explicitly warranted, if the warranty had exactly the purpose to protect the ordering party against any damage that has not occurred on the delivery item itself.
- i) Irrespective of the above disclaimer of warranty, the supplier shall generally not be liable for unforeseeable and completely untypical damage, except for cases of deliberate action or for

cases where the Product Liability Law applies or if a liability can be reasonably expected from the supplier by way of exception.

## 2. Liability for secondary contractual obligations

If, by the supplier's fault, the delivery item cannot be used properly as a result of a violation of secondary contractual obligations before or after the signature of the contract (e.g. legal duty to give advice), the provisions laid down in section 1 above shall apply accordingly to the delivery of unused machines.