

GENERAL TERMS AND CONDITIONS OF SALE

These General Terms and Conditions of Sale (hereafter referred "GTCS") shall govern and form an integral part of all Contracts entered into by **TESMEC FRANCE** (hereafter referred the "**Seller**") for the supply of goods and/or services (hereafter referred as the "**Product(s)**") to the Buyers. These GTCS prevail over any and all documents of a contradictory nature of the Client which have not been accepted in writing by the Seller.

1. GOVERNING PROVISIONS AND DEFINITIONS

These general conditions are applicable to any supply of equipment, digging attachment and related devices manufactured by TESMEC FRANCE. The "Products" and related services, as better itemized in each purchase offer (the "Offer"). Each Offer shall be deemed open for acceptance for a period of 30 days, except a different period of validity is therein specified.

These general conditions and the special conditions contained in the Seller Offer or in Order Confirmation, as the case may be, make the sale contract applicable between the Parties for the supply of TESMEC FRANCE' Products (the "Contract"). In case of contradictions, the special conditions in Seller Offer or Order Confirmation, as the case may be, will prevail. These general conditions shall not be modified by any course of dealing or trade customs and usage. Any Buyer's standard or special terms and conditions shall not apply. Cancellation, modifications and waivers of the Contract or any of the underlying rights or obligations shall not be effective without Seller's written consent

2. PRODUCTS

The Products, subject of these GCS, are described notably in terms of sizes, weights, performances and masses in the Technical Specifications provided to the Buyer within the framework of the commercial Offer.

Whenever the Buyer places an order, he expressly declares that he has taken due note of these Technical Specifications, that so he has been in a position to appreciate whether the Products meet his needs and that he has means and information as may be required to use the Products according to its needs, at its own risk.

The Products are intended for a merely professional use by expert Buyers. The specific and technical features of the Products require that the Buyer shall comply with the conditions of use, maintenance and storage arising out of the applicable rules and the instructions and recommendations given by the Seller in the Technical Specifications. The Seller declines any liability in case of non-compliance with these terms.

The photographs and drawings in the catalogues and Technical Specifications or in any other document are not binding, and The Seller will not be held liable.

The Buyer is in charge of using the Product in the foreseeable standard use conditions and in compliance with the safety and environment laws in force on the place of destination and in accordance with the best standards practice of its industry.

3. ORDER

3.1 Commercial Offer

Any order is subject to a prior commercial offer provided by the Seller and presented to the Buyer's approval, which will be valid only for a period of 1 month as from the date it has been sent. The seller shall include the Technical Specification of the Product in the Commercial Offer.

3.2 Contents of the Order

The order placed by the Buyer shall specify in particular the quantity of the Products, the brand, type, references of the Seller's Commercial Offer, the agreed price, terms of payment, date and place of delivery.

If a difference appears between the order and the order confirmation, the latter shall prevail. No order accepted by the Seller may be modified, suspended or cancelled totally or in part, unless prior written agreement with the Seller.

3.3 Order confirmation

The order shall be deemed final if the Buyer has made no reserve on the Order Confirmation within 15 days after its receipt, hereinafter called the "Order".

3.4 Rejection of Order

The Seller is entitled to reject the Buyer's orders in particular in the below stated cases:

- If in a previous Sale, the Buyer has not fulfilled all or part of its obligations
- Financing of the equipment by a funding agency shall be always mentioned in the order form. Failing to receive a positive answer from the funding agency 30 days after the order has been placed, the Seller reserves the right to cancel the sale. No down-payment will be returned to the Buyer.

4. PRICES AND PAYMENT CONDITIONS

Prices stated in the Seller's pricelists are non-binding. Prices are net of VAT, and all others taxes and duties. Published prices are subject to change without notice.

The price and the payment conditions are indicated in the special conditions. The payment of the price shall be remitted by the Buyer to the Seller's business address.

In case a down payment is agreed, the amount cashed shall be deemed as non refundable in case of Contract cancellation or termination.

If Buyer fails to make any payment on the due date, the Seller – without prejudice to any other right or remedy available - shall be entitled to charge the Buyer with interest at the rate as calculated according to art. 3, 1ett d) of the European Directive 2000/35/EC of 29 June 2000 on combating late payment in commercial transactions (e.i. the level of interest shall be the sum of the interest rate applied by the European Central Bank plus ten percentage points)

5. FORCE MAJEURE

The Seller shall have the right to suspend performance of its contractual obligations when such performance becomes impossible or unduly burdensome because of unforeseeable events beyond its control, such as strikes, boycotts, loc-outs, fires, war, civil wars, riots, revolutions, requisitions, embargo, restrictions imposed by any governmental legislation, rules or regulation, energy black-outs, delay in delivery of components or raw materials. Should the suspension due to force majeure last for more than six (6) months, Seller shall have the right to terminate the Contract by a fifteen (15) days' written notice Seller will be compensated for Products provided until that point, if any.

6. TRADEMARK AND INTELLECTUAL PROPERTY.

The Buyer cannot remove, cover or modify the trademark, labels, logos and signs found on the Products upon delivery. Any Intellectual Property rights pertaining to the Products shall remain a Seller exclusively right. Any form of reproduction, use and exploitation of the Seller's patents and know how is forbidden to the Buyer. In case of software embedded in the Products, the Buyer is granted with a grant a perpetual, non transferable, license, without any additional cost to Buyer limited for the use and maintenance of the Products, without any right to alter or revise such software

7. DELIVERY – TRADE TERM – RISK OF LOSS

7.1 Terms of delivery

Delivery dates are based on estimated manufacturing periods and shall not be deemed to represent fixed or guaranteed delivery dates, except expressly indicated in the special conditions. Seller's delivery obligation is subject to timely payment of the price from Buyer. Unless otherwise agreed, the delivery of Products shall be Ex-works TESMEC FRANCE Factory in France (Incoterm ICC Paris Ed. 2020).

Products delivered can show a difference in size, weight, performance and mass compared to the values as may be given in the Technical Specifications up to a maximum limit of 10%.

Should the Seller not be in a position to deliver the Products of the Order, he is entitled either to cancel the sale or to refund the received down-payments if any, without any other compensation, or to supply some equipment with similar features, subject to the buyer's written consent. In the event of a mere change in reference, the replacement will be made without agreement.

The Buyer undertakes to take delivery of the Products within but not later than 30 days after the receipt of the ex-works Delivery Notice. Once that time limit has expired, the storage costs shall be charged to the Buyer without prejudice to any legal proceedings that the Seller may take.

7.2 Delay of the parties in contract's execution

In case of delay in delivery for which the Seller is responsible, and provided that the delivery date is expressly indicated as "binding", the Buyer may request, after having summoned in writing the Seller, liquidated damages at 0.5% for each complete week of delay (7 days), starting from such delivery date or at the end of the grace period, if any.

The liquidated damages shall be calculated on the net amount of the Products delayed; Services, additional transport freight and special packing other the standard one, if any are excluded. The liquidated damages total amount can't exceed the 5% of the delayed Products' net amount and shall be deemed as a satisfactory and full reimbursement of all the possible damaged suffered by the Buyer, excluding any further claims.

Any delay caused by force majeure or by acts or omission of the Buyer (e.g. the lack of indications which are necessary for the manufacturing or for the supply of the Products) shall not be considered as a delay for which the Seller is responsible.

The Seller reserves the right to make partial deliveries.

All risk of loss and damage shall pass accordingly. The Seller shall be no way responsible for loss or damaging of the Products if they occur after the passage of risk. The loss or the damaging of the Products occurred after the passing of risks don't relieve the Buyer from payment of the price.

Unless otherwise agreed, handling, transport, customs and insurance operations shall be at the Buyer's cost and risk.

CUSTOMS REGULATIONS. It is the policy of Seller to fully comply with any and all regulations in force at the moment of shipment, including the Export Administration Regulations, relating to the transportation, sell, delivery or shipment of products. Seller is not responsible for the delay or failure of delivery of any project subject to this sale which is not permitted to be exported. Further, Buyer represents, warrants and agrees that Buyer has provided to Seller all information regarding the end-user and final destination of the Project subject to each sale. Buyer understands and acknowledges that Seller will rely on the information provided by Buyer in making a determination whether to make application with the competent Authorities for an export license or approval and in making any application.

Diversion, exportation or re-exportation contrary to applicable law is prohibited. Seller has the absolute right -- without any liability to Buyer -- to cancel any sale which Seller believes to be in violation of any export regulation.

8. PACKAGING

Unless otherwise stated by the Buyer, the need and/or the type of packaging shall be at the Seller's discretion. Packaging costs shall always be borne by the Buyer and packages shall not be taken back by the Seller.

If Buyer specifies the packaging or the company that will make the packaging, the Seller shall not be held for any damage or loss caused by a defective or unfit packaging.

9. CLAIMS OF BUYER

Buyer shall inspect Products immediately upon delivery. Products shall not be subject to use until their commissioning/test run, unless expressly permitted by the Seller in writing. Any claim must be made by Buyer in writing within 8 days of receipt of delivery, and all ascertainable defects and nonconformities shall be stated with particularity or be deemed waived. Under no circumstances shall Products be returned to Seller without Seller's written permission.

A claim that Products are nonconforming shall not entitle Buyer to deduct any sum from any invoice unless such claim has been allowed in writing and accepted by the Buyer. Invoices shall be paid in full in accordance with the Contract. All claims by Buyer are subject to the claims procedures set forth in Seller's warranty conditions.

10. CHARACTERISTICS OF THE PRODUCTS - MODIFICATIONS.

Any information or data relating to the technical features and/or specifications of the Products contained in catalogues, price lists, brochures and similar documents shall be binding only to the extent they are expressly referred to the Contracts. Seller may make any changes to the Products which, without altering their essential technical features, appear to be necessary or suitable

11. MADE TO ORDER PRODUCTS.

For any Product made to the order of Buyer, or in case the Buyer charges the Seller to study, design and/or manufacture a particular kind of component and/or technical solution, Seller shall have no responsibility for errors or variations in tooling, patterns, specifications, drawings, or designs furnished to it by Buyer.

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12. COMMISSIONING

If Services, assembly and/or start up and/or commissioning operations of the supplied Products shall be done by Seller's technicians or third personnel charged by the Seller at the place of destination or at the job site, the Buyer shall bound its personnel and the one of the End User or of the Contractor, if different, to co-operate with the Seller's personnel and procure at its charge and without undue delay all the necessary tooling and special equipment for the prompt and successful execution of the above mentioned operations.

In a suitable time before the starting the operations, the Buyer shall provide to the Seller's After Sales and Service Dept.:

- i) logistical information by sending back the relevant Seller data sheet, duly filled in;
- ii) applicable safety regulations and the risk assessment of the job site.

The Seller is not able to guarantee the timely performances of the operations if the previous information are lacking or not sent in due time.

The Buyer relieves the Seller from any kind of responsibility for delay in assembling, start up and commissioning/test run due to force majeure causes, to third parties or caused by the Buyer's faulty cooperation or delay in providing the necessary tooling and special equipment.

At the end of the commissioning/test run operations, the Seller and the Buyer personnel shall sign a certificate stating that the operations have been completed and that the Products are accepted and ready for their intended use.

Should the equipment require any commissioning and should the Seller not be able to perform it due to reasons for which the Buyer is responsible, the latter will be notified in writing that he is given 15 days to enable the said commissioning, failing to do so, he will be charged according to the Order in addition to the storage costs without prejudice to any legal proceedings that the Seller may take.

13. TRANSFER OF PROPERTY

Notwithstanding the transfer of risks which takes place on the date of delivery of the Products as set forth in section 7.1, the equipment and spare parts are and shall remain the sole property of the Seller until fulfilment by Buyers of its payment obligations.

Failing to pay the price in full, the Buyer undertakes to return the Products as may be sold, at its expenses and risks and, on request of the Seller sent in writing.

Any cost, if any incurred, for repairing the products sold shall be borne on the failing Buyer.

Failing, even partially, to comply with any date of payment may entail the repossession of the Products.

The right of claim shall be used even in the event of a judicial settlement or a winding-up of the Buyer. In case of any claim, the sale will be cancelled with full right.

Notwithstanding anything contrary contained in article 1583 of the French Civil Code, the delivery of the Products shall entail the transfer of the risks onto the buyer, both for the damages suffered by the equipment and for those as may be caused to third parties.

Notwithstanding the reserve of title, the Buyer shall bear any risks upon the delivery of the Products as may be sold, in the conditions of the contract. Until payment of the price in full, the Buyer has obligation to take greatest care of the Products.

He shall insure them to the benefit of whomever they will belong to, against any risk to which they may be exposed once they have been delivered. Moreover, he shall keep them in such a way that they cannot be confused with other supplies and therefore he shall preserve the identification marking.

In the event of any intervention of the Buyer's creditors and more particularly in the event of a re-possession of the equipment or the opening of insolvency proceedings, the Buyer shall promptly inform both the Seller in writing with acknowledgment of receipt and the execution creditors or the entities of the insolvency proceedings. The Buyer shall bear any charges arising from the measures taken to stop such an intervention and in particular any expenses related to a third party opposition.

Subject to the agreement of The Seller, the Buyer will be however entitled to resell the Products sold to its Buyers even though they are sold with a reserve of title clause, within the framework of the normal operation of its firm provided that he pays in full the Seller on the day of the resale if this one is made cash, or he hands over to the TESMEC FRANCE on the day of the resale a copy of the resale agreement which states the purchaser's identity and address and the terms of payment if this agreement provides a deferred payment.

14. TERMINATION

Sales are concluded taking account of the Buyer's juridical, financial and economical at the time of the order.

Therefore should the Buyer's financial situation get affected by weakening conditions between the date of the order and the date of the delivery, the Seller is entitled either to ask for a payment prior to the delivery or to terminate the sale with no need to any legal proceedings, in writing with acknowledgment of receipt.

Furthermore in case of non-compliance by the Buyer with its obligations under the agreement, the Seller will be entitled to terminate the sale with no need to any legal proceedings and without further notice to comply therewith which has remained unsuccessful for one month after its receipt.

The Buyer may not require the cancellation or termination of the sale nor in no event can the Seller be held liable for any change in the initial technical specifications or features which may occur between the placing of the order and the delivery, as a result of the application of a national or EC legal text or of the manufacturer's instructions. The Seller undertakes to notify promptly the Buyer in the event of any such changes.

If Buyer terminates or cancels a purchase order, Buyer is liable to Seller for all Seller's costs and other commitments incurred as of the date of cancellation, plus Seller's incidental damages and profits lost from Buyer's failure to perform.

15. WARRANTY / INSURANCE

15.1 Scope / time / limit of the warranty

The Seller warrants that the Products are in compliance with the specifications of the Order, with the state of the art and they are free from defects in workmanship, materials and design.

The time of the warranty of the Products is equal to the shorter of the following periods: 1 year from the date of delivery or after 1,000 working hours, the hour counter of the engine being taken as proof. Beyond such times, the Products are no longer covered.

The warranty on machines only applies if the Product is used and maintained as per operation & maintenance manual supplied with the Product, and if it is used with Spare Parts & consumables exclusively provided by the Seller.

The warranty does not cover:

- The normal wear of the Products, wear of mechanical, thermal or chemical origin, resulting from conditions of use that do not comply with the normal intended use of the Products, and with the maintenance instructions given by the Seller.
- Any damage to the Products caused by experiments or tests other than usual checking carried out according to the good practice prior to the commissioning
- Any alteration or damage resulting from negligence, lack of control, maintenance or defective storage
- Any Product subjected to repairs, modifications of parts, replacement of parts made by or on request of the buyer by a third party contractor not approved by the Seller or failing to obtain any such agreement, without the prior consent in writing by the Seller.
- Trenching attachment, gear motors and batteries.

Contract work and worn out parts, as well as spare parts and consumables, are excluded from warranty.

Second-hand equipment is sold to professional buyers who acquire the equipment as is, with full knowledge of the condition of the Product. Consequently, TESMEC FRANCE does not apply any guarantee of any kind whatsoever to second-hand equipment (unless expressly agreed in writing). The buyer assumes full responsibility for his purchase.

The warranty does not apply in the event of any failure of payment by the Buyer. The Buyer may not invoke a refusal of warranty to suspend or to postpone any of its payments.

15.2 Application and implementation of the warranty

The Buyer must notify the Seller of the defect of the Product in writing within eight days as from its discovery. Failing to do so, the Buyer is not entitled to pursue remedies for guarantee against the Seller.

The Buyer has to keep the Products as they were as from the discovery of the alleged defect so that the Seller, the Buyer and on request of the Seller, the manufacturer of the Products or its representative can meet within one month as from the receipt by the Seller of the aforesaid writing in order to execute a check-joint report regarding the effective defect. During such a time under no circumstances can any Product be returned to the Seller without its prior agreement.

In the event that the report establishes that the defect is covered by the present guarantee, the Seller shall make at its option either the free-of-charge repair of the defective equipment or the supply, under the terms of the initial contract, of a replacement equipment, to the exclusion of any other charges, in particular transport charges (return to the factory of Seller and reshipment to the Buyer) and of any other compensation for the damage caused.

The repair or replacement of the original Product shall not modify the scheme of the guarantee as it results from these provisions. Therefore, the effect of the implementation of the guarantee is not to extend the guarantee beyond its initial period.

15.3 Repairs

Any equipment to be repaired shall be transported or forwarded to the Sellers' workshops or to its representative's workshops at the expense and risk of the Buyer. Any return to the Buyer once the equipment has been repaired shall be made in the same conditions. Should the repair be made in the place of operation of the equipment, the accommodation and travel expenses shall be invoiced in addition to the supplies and labor costs.

16. LIABILITY and DAMAGES

The Seller's liability is limited to the direct material damages caused to the Buyer which may be the result from faults or failures attributable to the Seller in the performance of the contract.

If products are nonconforming, Buyer's exclusive remedy shall be limited to the repair or replacement of the nonconforming products in accordance with and limited by the Limited Warranty. In no event shall Buyer be entitled to, nor Seller liable for, any consequential, incidental, indirect, special lost profits, business interruption, multiple, statutory, punitive, exemplary, or contingent damages of any kind, whether arising out of the third party claims against Buyer, or breach of contract, tort, warranty, negligence, strict liability or other theories of law with respect to Seller's delivery of products or services or any undertakings, acts, or omissions realtinf to thereto.

All the reasons being included, except for personal injury or serious fault, the Seller's civil liability shall be limited to an amount equal to the smaller of both following amounts: the ex-VAT price of the Products which have generated the liability or a maximum amount limited to twenty thousand euros.

The Buyer expressly waives to make any proceedings against the insurer(s) of TESMEC FRANCE to claim the coverage of the above damages.

Waivers of recourse as mentioned in the aforementioned sections are binding upon and have effect against any authorized representative of the purchaser, sub-purchasers and co-contractors or subcontractors and the buyer is obliged to inform them if applicable

17. MISCELLANEOUS PROVISIONS.

Entire Agreement and Severability. Each Contract for the sale of Products shall be deemed concluded upon TESMEC FRANCE either receiving the Order Confirmation duly signed by the Buyer confirming in writing its order or starting the performance of such order by the Buyer.

These General Conditions shall be deemed accepted by the Buyer also in case the Contract is executed by the Seller starting to perform the order of the Buyer.

The invalidity of any one of the contractual provisions shall not affect the validity of the remaining provisions.

Advertising. Buyer allows the Seller to put its name, logos and possible pictures taken of the Products in the job site in TESMEC FRANCE reference list and advertising materials, including web site, on the assurance that the Seller will use them for marketing purposes only.

Limitations on suits and actions. No action or suit to enforce Buyer's rights or remedies arising from each Contract or these Standard Terms and Conditions shall be commenced later than one year from the date of any actual breach by Seller

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18. GOVERNING LAW and COMPETENT COURT

This Agreement shall be governed by the French law.

18.1. APPLICABLE LAW.

For what not expressly written down in these general conditions, each sale Contract shall be regulated by the uniform law provisions of the UN Vienna Convention of 11 April 1980 related to the international sales of Products.

18.2. DISPUTE RESOLUTION. The Parties undertake to execute the Contract according to the principle of good faith and to use their best efforts to find an amicable solution to all and any disputes that might arise for the interpretation, execution, validity and enforcement of its provisions. If they are not able to reach a friendly settlement, the competent Court of the place where the Seller has its registered office shall have exclusive jurisdiction. However, as an exception to the principle hereabove, the Seller is in any case entitled to bring its action before the competent Court where the Buyer has its registered office.