I. GENERAL PROVISIONS

1. These General Terms and Conditions form an inherent and inseparable part of the Contract between the CUSTOMER and PUTZMEISTER IBERICA (Seller) (hereinafter, “PMIB”). Even though express acceptance is not stated, the fact of placing a firm order and/or making an advance payment on account or a deposit in relation to a previously placed order implies the CUSTOMER’s agreement herewith. These Terms and Conditions may only be amended following express written acceptance by PMIB, through its authorised staff, and they shall under no circumstances be entirely cancelled, with all those which are not contrary to those expressly accepted by PMIB remaining valid.

2. Data about dimensions, appearances, weights, output, consumption and other technical data included in the documents accompanying the offer are for information purposes only and are approximate values and shall not be binding, unless they are expressly designated as exact in the offer.

3. The contract of sale shall be perfected by PMIB’s written acceptance of the CUSTOMER’s order or by the partial or total delivery of the order.

II. PRICES

1. Prices are deemed to be ex-works Madrid, regardless of the place of shipment and/or delivery. Packaging shall in no event be included in the said prices and must be increased by the applicable amount of VAT or any other tax which may replace it from time to time.

2. The prices of the imported products include customs costs and have been calculated based on the currency parity of the country of origin of the product/ Euro on the day of PMIB’s acceptance of the order. The agreed price shall be increased or decreased if the currency parity of the country of origin of the product/Euro on the planned delivery date suffer an upward or downward modification of over 5% as compared with the parity on the date of acceptance of the order. For this purpose, the parities in question shall be those published on their respective dates by the Bank of Spain (Banco de España) and/or European Central Bank for “seller” currencies.

III. DELIVERY, PLACE, TERM, TRANSPORT

1. All goods shall always be deemed to have been delivered at PMIB’s address, regardless of the place of shipment and/or delivery, and shall therefore always be transported at the purchaser’s risk and expense, even when they are shipped freight prepaid.

2. Unless otherwise agreed, the delivery period shall commence when PMIB gives formal notice of the delivery period once it has received the firm order and all technical characteristics have been defined and the purchaser has complied with its obligations, if any, under no circumstances shall PMIB be liable for any possible loss or damage which may arise from any delay in delivery, especially if PMIB is prevented from complying with the said delivery period due to circumstances not attributable to it and which have a direct and/or provable effect on its compliance therewith. Such circumstances include events of force majeure beyond PMIB’s control such as, without limitation, measures taken in connection with labour disputes, especially strikes and lockouts, and the occurrence of unforeseeable events such as delays in the supply of parts (including spare parts), raw materials and transport, provided they are within the supplier’s (provider’s) responsibility, or extreme adverse weather conditions.

3. Upon the CUSTOMER’s request, PMIB shall proceed, in the CUSTOMER’s name and on its behalf, to contract the transport to the place required by the CUSTOMER. Unless it receives written instructions to the contrary, PMIB shall normally choose the means of transport which is most competitive for the CUSTOMER.

4. PMIB reserves the right to perform partial delivery of an order if so justified by the specific circumstances.

5. The CUSTOMER shall check the condition of the goods at the time of delivery, and any objections regarding quantity and quality which it may deem fit must be made at that time.

6. PMIB shall deliver a full set of documents together with the purchased equipment and/or installation, where applicable. The PURCHASER is aware that the purchased equipment (where applicable) is complex equipment which must be handled in accordance with the manufacturer’s instructions and/or recommendations. The CUSTOMER therefore undertakes to observe and comply with all technical and safety instructions contained in the relevant operation, working and maintenance manuals provided by PMIB, which the CUSTOMER expressly states to be familiar with.

IV. PAYMENT

1. Sales made before the CUSTOMER can be classified for a credit account shall always be carried out IN CASH upon delivery of the goods or upon provision of a service.

2. Save where expressly agreed otherwise, invoices to CUSTOMERS which have been classified and for which a credit account has been opened shall be payable within sixty (60) days from the date of invoicing.

3. The CUSTOMER assumes responsibility for the payments stipulated in the contract. In the event of any deferral, PMIB may demand, from the moment of each due but unpaid amount and/or delay in payment, that the CUSTOMER pay an additional 1.2% per month by way of interest on the due but unpaid amount or delayed payment. This is without prejudice to the fact that, if payment was deferred, failure to pay two installments or the last payment owed may result in the payments owed becoming due or in contract termination, with the effects provided for in Article 10 of Spanish Law 2/1998. In addition, the CUSTOMER may pay any deferred instalments in advance, discounting the agreed deferral interest.

4. Any bill of exchange not met upon maturity must be paid immediately, accumulating any expenses arising therefrom, together with the corresponding late interest at a monthly rate of 1.2%.

5. The existence of an unpaid debt shall cause the CUSTOMER’s account to be blocked immediately, and the said account shall not be re-activated until the outstanding amounts (principal plus interest) have been paid in full by the CUSTOMER.

6. The invoice shall specify amounts and due dates. Any error by PMIB must therefore be notified before the due date. If there is no notification in this regard, the said conditions shall be deemed to be known and accepted.

V. RETENTION OF TITLE

1. PMIB shall retain title of the products being sold until full payment of the outstanding sums by the CUSTOMER.

2. The CUSTOMER shall be responsible for taking the necessary measures to preserve the purchased products in good condition.

VI. WARRANTY

1. PMIB warrants the products for a period of twelve (12) months as of the date of delivery of the equipment, material and/or installation purchased. PMIB assumes the commitment to remedy, with all reasonably due diligence, the defects appearing in the equipment in relation to the functional specifications of same specified in the use and operating manuals, with exclusion of other requirements and/or responsibilities. Under this warranty, at its discretion, PMIB may proceed to repair, replace or pay, free of charge, for any part supplied by PMIB which may be unserviceable or prove noticeably unfit for use due to defective construction, sub-standard material or faulty execution, providing that:

a) PMIB is given reliable notice, within the fifteen (15) days following the time at which the alleged defect became known by the CUSTOMER, of the existence of this defect.

b) The CUSTOMER has fulfilled all the contractual obligations assumed.

c) The equipment, product and/or installation has been duly installed, started up and the recommended maintenance operations carried out, by authorized PMIB staff or by third parties expressly authorized by PMIB.

d) The CUSTOMER has not attempted to repair the faulty product himself or by means of a third party, or else replaced its parts, except with the prior express permission of PMIB.

2. The warranty does not cover the damage caused in parts and accessories by normal wear, particularly all those parts that come into contact with the material transported.

3. The warranty does not include the damage and/or troubles stemming from the following causes: improper or untrained use, faulty installation or start-up by the CUSTOMER or third parties authorized by the CUSTOMER, defective or careless handling (in particular, excessive loading, use of sub-standard fuels or consumables, land with inappropriate support, chemical, electrotechnical or electrical influences or troubles not attributable to the equipment).
GENERAL SALES CONDITIONS

4. The warranty does not include the consequences stemming from inappropriate alterations or repair jobs carried out by the CUSTOMER or third parties commissioned by the latter without prior PMIB authorization, irrespective of the effects that may arise in respect of the contract as a result of the infringement of the terms thereof.

5. The warranty shall cover the labour and materials expenses for the replacement of faulty parts, barring the travel expenses (travelling time, Km., air fares, customs duties…) which shall be invoiced in accordance with the PMIB customer service rates and terms and conditions in force at the time.

6. The warranty does not include the costs generated by the shipment of replacement parts or by the dispatch by the CUSTOMER of the faulty part.

7. The use of non-original spares automatically cancels every warranty over the equipment, product and/or installation and discharges PMIB of all public liability over the product.

8. The warranty will not cover those products that do not bear the nameplates or identifying marks present at the time of delivery.

9. PMIB liability is confined to upkeep maintenance during the warranty period, which is of 12 months, irrespective of the fact that any defect may have been remedied or repaired during that period.

10. PMIB will not assume liability for possible costs that stem from breakdowns or may give rise to downtimes, nor will it assume any kind of compensation for damages, losses of perishable material, replacement costs for faulty machinery, etc.

11. Any request for warranties shall be processed through the After-Sales Department, after completion of the respective Warranty Claim Form, accompanied necessarily by the due arguments and whatsoever graphic information and reports may be possible. Its contact details are:
E-mail: services@putzmeister.es
Telephone: +34 91 428 1210

12. Every part that the CUSTOMER considers subject to cover under warranty should be claimed through the After-Sales Department and not directly through the Spares Department. Such material will be invoiced to him in the first instance, although the PMIB After-Sales Department undertakes to deal with such a claim within a period of not more than two months, so that, if accepted, payment for the part will be made in the shortest time possible.

13. In the event of the aforementioned troubles arising not covered by warranty and the CUSTOMER requesting their remedy or repair, PMIB will invoice such jobs, in accordance with their rates and terms and conditions in force at the time.

VII. LIABILITY

1. The CUSTOMER shall be solely liable for any loss or damage which may be caused by its use of the purchased equipment, material and/or installation. The CUSTOMER shall be responsible for taking all necessary measures to prevent any loss or damage which may arise from the use of the purchased equipment, material and/or installation, and PMIB shall not be liable for any such damage. PMIB shall not be liable for any loss or damage arising from the CUSTOMER’s use of the machine, regardless of the legal grounds therefor.

2. In the event that PMIB has to provide compensation and/or redress as a result of a final judgment, or arbitration award where applicable, by reason of the use of the Product or any other reason relating to this contract, the compensation to be paid to the CUSTOMER may in no event exceed the product, equipment and/or installation price actually received by PMIB. Notwithstanding the foregoing, the above compensation may in no event exceed SEVEN HUNDRED AND FIFTY THOUSAND EUROS (750,000).

3. PMIB may not be held liable under this Contract or under any ancillary Contract, Annex or Addendum for any loss of income or profit (loss of earnings) or for any indirect, consequential or derived loss or any other type of damage, including any resulting from breach of contract, negligence or any other wrong.

VIII. RETURN OF MATERIALS

Any return must be previously consulted with, and expressly approved by, PMIB, and must be mandatorily made within fifteen (15) calendar days following the date of delivery. Any such return shall be made, if applicable, with freight prepaid by the CUSTOMER. If appropriate in each specific case, after the appropriate credit note has been issued, it will be deducted from the following invoice of the CUSTOMER for the same or a higher amount, if there is one.

IX. DOCUMENTATION

1. PMIB retains full ownership and title of all its drawings supplied to the CUSTOMER for information purposes, and their use shall be generally forbidden for any individual or legal entity outside the company.

2. In the performance of this contract, the CUSTOMER may receive proprietary information from PMIB. This shall continue to be deemed to be the sole property of PMIB and its confidentiality shall be maintained and protected. The CUSTOMER shall refrain from using PMIB’s proprietary information for any purposes other than the performance of this Contract. The proprietary information may include, without limitation, trade secrets, processes, drawings, formulae, specifications, products, software packages, technical know-how, and operating methods and procedures.

3. The CUSTOMER expressly acknowledges that all industrial and intellectual property rights there may be on the equipment, installations and/or other supplies relating to this contract, and any associated documentation, belong solely to PMIB. The CUSTOMER undertakes, and acquires the obligation, to refrain from directly or indirectly registering any Products with similar functionality to those forming the subject matter of this Contract. Any such actions shall, independently of any criminal liability which may result therefrom, entitle PMIB to compensation.

X. JURISDICCIÓN

This contract is governed by the Laws and Regulations of Spain, regardless of the CUSTOMER’s nationality and the place of delivery of the goods supplied. To that end, PMIB and the CUSTOMER, expressly waiving any other jurisdiction which might otherwise apply to them by reason of their domicile or nationality or the place of performance of this contract, submit to the jurisdiction and authority of the Courts and Judges of Madrid (Spain) for any actions and claims that may arise from the performance and interpretation of the contract.

Putzmeister Ibérica, S.A. Underground Division
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Data Protection Clause: All personal data, including those resulting from computer processes, shall be recorded in automated files belonging to Putzmeister Ibérica, S.A. and may be used by promotion actions relating to our products. The controller of the data protection is Putzmeister Ibérica, S.A., with address at Camino de Hormiguearas, 271, 28031 Madrid (Spain). Any person included in the said files may exercise the rights of access, rectification, cancellation of data and objection in accordance with the Spanish Personal Data Protection Law (Organic Law 15/1999 of 13 December 1999, Ley de Protección de Datos de carácter personal).