



**International Terms and Conditions of Sales and Delivery of the
Company AVERMANN BETONFERTIGTEILECHNIK
GMBH & CO. KG
- in the following: AVERMANN -
for the Supply of Machines and Spare Parts, as well as
Services and Installation
(Status: 01.2017)**

**Article 1
Application of the General Terms and Conditions of Sale and Delivery**

1. These Terms and Conditions of Sale and Delivery apply for all current and future transactions of AVERMANN with customers based outside the Federal Republic of Germany. They shall apply even if, in future transactions, AVERMANN does not, once again, point out the terms and conditions of sales and delivery to the customer. The customer's general terms and conditions shall, under no circumstances, become subject matter of the contract. This shall apply even if AVERMANN is aware of or does not expressly contradict them, unless their validity is approved explicitly in writing.

2. These General Terms and Conditions of Sales and Delivery do not apply if the purchaser buys the goods for personal use or for use within the family or in the household and AVERMANN was or must have been aware of this on conclusion of contract.

3. For the interpretation of the clauses of commerce/trade, in cases of doubt the Incoterms (International Commercial Terms) in their current version take precedence.

4. All bids, deliveries and services provided by AVERMANN take place exclusively on the basis of these general business terms of trade. Should AVERMANN assume additional or more extensive obligations, the validity of these General Terms and Conditions of Sale and Delivery remain unaffected.

**Article 2
Quotations and Conclusion of Contract**

1. Quotations are always non-binding. We reserve the right to make technical alterations and changes as regards shape, colour and/or weight, within reasonable limits. Illustrations, drawings, dimensions, weights and other performance data are only binding if this is expressly agreed in writing. AVERMANN reserves the right to make changes and improvements with regards to design, materials used and finish, provided that no impairment of the use specified in the contract or of normal use in Osnabrück/Germany of the contractual item occurs as a result. If, in the opinion of the customer, the goods to be supplied are not exclusively suitable for normal use in Osnabrück/Deutschland or if the customer has a particular suitability for use or a particular characteristic or quality in mind for the commodity or if the customer plans to use the equipment for a purpose out of the ordinary, for the processing of unusual materials, in conditions of increased stress or especially hazardous to life, limb or health or to the environment, he is obliged to make AVERMANN aware of these expectations and/or conditions, in writing, before conclusion of contract.

2. AVERMANN reserves the right of ownership and copyright to all cost estimates, drawings and other documents. Without the express prior written approval of AVERMANN they may neither be made available to third parties nor be used for advertising purposes. AVERMANN has at any time the right to demand their return from the customer. If the customer does not comply with this obligation, AVERMANN can demand a lump sum payment of damages of five percent of the order value. The customer retains the right to prove to AVERMANN that lesser damages were incurred.

3. The contract shall be concluded upon written confirmation of the order by AVERMANN. The written confirmation of order by AVERMANN is authoritative for the entire content of the contract. This applies, subject to the customer's last minute written objections, even if it deviates from the customer's declarations. In the absence of a confirmation of order, the contract can also be effectively concluded by implementation of the order. Public statements, recommendations or advertisements shall not constitute complementary or contractual information on the quality of the goods. The customer receives no guarantees in the legal sense of the word.

4. In the event that the customer's order qualifies as an offer under Article 145 BGB, AVERMANN can accept it within two weeks of receipt of the order by AVERMANN. If the order is at variance with the proposals or the offer made by AVERMANN, the customer is to draw up the order in writing and mark the differences.

5. All amendments, changes and subsidiary agreement to the contract must be made in writing or require written confirmation from AVERMANN in order to be legally valid. The employees, commercial representatives or other agents of AVERMANN are not authorised to enter into subsidiary agreements or to give warranties or guarantees beyond those in the written contract. Furthermore, they are not authorised to grant exemption from the requirement for a written confirmation of order.

6. If the order is placed electronically, AVERMANN will normally confirm receipt of the order. This confirmation of receipt only records receipt of the order and does not constitute binding acceptance of the order. The statement of acceptance can, however, be combined with the confirmation of receipt.

**Article 3
Prices and payment**

1. Prices are calculated ex-works, exclusive of packaging, loading, transportation and customs duty if applicable, in the case of spare parts, less installation and in Euros, provided nothing different is specified in the confirmation of order. The customer pledges that all the conditions are, from a German perspective, fulfilled for turnover tax (VAT) free delivery. Where AVERMANN does not receive proof for the tax-exempt export delivery or AVERMANN has, due to the modalities of delivery or due to circumstances beyond the control of the customer, to pay turnover tax, the customer shall indemnify AVERMANN unreservedly, irrespective of further-going claims. The indemnification is accepted by the customer without any further conditions or other objections, especially foregoing the objection of expiry of the limitation period agreed and also includes the reimbursement of the expenses incurred by AVERMANN. As regards additional service costs, reference is made to the provisions of Article 4.

2. Unless the confirmation of order specifies otherwise, the purchase price becomes payable with the issuing of the invoice. The consequences of any delay in payment on the part of the customer are governed by the provisions of the law. The customer shall pay interest charges at 8% above the base rate during the period of default of payment. The right to verify and assert a greater amount in damages, however, is reserved by AVERMANN. In this case, the customer's right to prove that no or a significantly lower level of damage was suffered by AVERMANN as a result of the delay of payment, is reserved. In the absence of any special arrangement, invoices are payable net. The deduction of cash discounts requires a special written agreement.

3. In the event of several outstanding claims, AVERMANN reserves the right to initially apply a payment, rate payment or down payment for the repayment of the debt providing the least security and, in the case of numerous debts that are equally secured, for the older debt and, in the case of debts due payable for the same amount of time, for relative repayment.

4. The customer only has a right to offset if his/her legally determined counterclaim is not contested or is recognised by AVERMANN. The customer can only exercise a right of retention if his/her counterclaim is based on the same contractual relationship.

5. AVERMANN reserves the right to adjust its prices appropriately if, after conclusion of contract, reductions or increases in costs (especially due to wage settlements or changes in the price of materials) occur. If the customer does not accept delivery of the goods by the date stipulated in the confirmation of order, then prices in effect at the time of actual delivery apply. At the customer's request, AVERMANN is obliged to provide the appropriate proof.

6. Bills of exchange, checks and other securities will only be accepted for the purpose of payment and following prior written agreement. All costs associated with such acceptance (e.g. collection and discount charges) must be refunded by the customer without delay. The period of validity of bills of exchange is limited to 90 days from the invoice date.

7. Additional deliveries and services agreed after confirmation of order will be invoiced separately. Part deliveries and/or part performance of services are to be paid for within the time limits laid down in the terms/conditions of payment and -in the absence of such- in the confirmation of order.

8. In the event of non-compliance with the terms of payment or - in the absence of such - with the payment deadlines laid down in the confirmation of order or in circumstances which become known to AVERMANN after conclusion of contract and which serve to reduce the creditworthiness of the customer, all amounts outstanding to AVERMANN shall become immediately due. AVERMANN is then entitled to implement outstanding orders only against pre-payment or provision of a security or to withdraw from the contract or to claim damages for non-performance following a suitable subsequent period and, notwithstanding the rights mentioned above, take back, at the customer's expense, the goods supplied under reservation of ownership. If part payments are agreed and if, after having been granted a reasonable deadline extension, the customer is still in default of payment, then AVERMANN is entitled to withdraw from the contract. The services/performance provided by AVERMANN up to that point in time will be charged to the customer on the basis of the services already provided by AVERMANN.

**Article 4
Transfer of risk, packaging and despatch**

1. Unless the confirmation of order specifies otherwise, delivery "ex-works" (EXW Osnabrueck, in accordance with Incoterms) is agreed. This also applies for part deliveries and part services/performance provided by AVERMANN, provided it is justified according to the contract and these International Terms and Conditions of Sale and Delivery on part services and part deliveries.

2. The costs for packaging, despatch, payment transactions, customs duties etc. will be charged to the customer separately unless otherwise agreed.

3. The type of packaging and mode of shipment are selected by AVERMANN according to its best judgement. The return of one-way/disposable packaging is subject to special agreement. The customer is, however, obliged to return reusable packaging at his own expense.

4. Goods will only be insured against damage during transportation on the instructions of the customer. The costs of this insurance will be invoiced to the customer separately.

**Article 5
Delivery times**

1. The delivery time is specified in the written confirmation of order of AVERMANN. Binding delivery dates or periods require the written confirmation of AVERMANN to become effective. Start of the delivery period assumes clarification of all technical issues. Compliance with the delivery deadline assumes the fulfilling by the customer of his contractual duties and obligations in accordance with the agreement. It is especially important that the customer provides, in good time, the documents, authorisations, clearances and licences to be obtained, issues letters of credit and makes down payments in accordance with the agreement. Otherwise, the delivery time shall be extended appropriately, unless AVERMANN is responsible for the delay.

2. If delivery is delayed at the request of the customer, AVERMANN is entitled, after an appropriate period of grace has been set and elapsed without result, to dispose of the goods elsewhere and to issue the customer an appropriately extended delivery period.

3. In the event that the customer delays acceptance or culpably violates his duty to cooperate in any other way, then AVERMANN is entitled to demand reimbursement of the damages incurred in this respect, including any additional expenses. The right to assert additional claims remains reserved. The right of the customer to provide evidence that no or a lower level of damage has accrued to AVERMANN remains reserved.

4. Where the conditions laid down in Paragraph 3 apply, the risk of chance loss or chance deterioration of the sale goods is transferred to the customer at the latest at the moment that he defaults on acceptance or payment.

5. Compliance with the delivery deadline is subject to correct and prompt delivery to AVERMANN itself. This only applies where the failure to deliver is not the responsibility of AVERMANN, in particular, where a congruent covering transaction has been entered into with our supplier. AVERMANN shall immediately inform the customer of the inability to fulfil the order. Any counter-performance already made will be reimbursed immediately.

6. Delivery dates or periods will be postponed or extended appropriately if AVERMANN is prevented from providing the service/performance punctually due to act of God/force majeure resulting from industrial disputes or other circumstances for which AVERMANN is not responsible. The impossibility of procuring raw materials and means of transportation are accorded the same status as the aforementioned cases. This also applies where similar circumstances affect our sub-suppliers. AVERMANN accepts no liability for damages arising as a result of the above on any legal basis. Should the hold-up last for more than three months, the customer is entitled, after a reasonable extension of time, in respect of the unperformed part to withdraw from the contract. In this event, he will not be entitled to assert any claim for damages.

7. The customer only has rights or claims due to delay if AVERMANN is responsible for the delay.

8. AVERMANN is entitled at any time to provide part deliveries and part services unless part performance of the contract would not be of any interest to the customer. Part deliveries can be charged separately. Complaints regarding part deliveries do not release the customer from the obligation to accept delivery of the balance of the order in accordance with the contract.

**Article 6
Liability for defects/damages**

1. A material defect exists if the goods, in consideration of the provisions contained in Article 2 Paragraphs 1, 3 and 4, deviate significantly from the design, quantity, quality and suitability for use agreed in the written confirmation of order or, unless otherwise agreed, from the condition and suitability for use in Osnabrück/Germany. A defect in title exists if the goods, at the time of transfer of risk, are not free from the rights or claims of third parties enforceable in the Federal Republic of Germany. More extensive legal exclusions or limitations on the liability of AVERMANN remain unaffected. Unless anything different is explicitly agreed in the written confirmation of order, AVERMANN is, in particular, not responsible for the goods being suitable for anything other than normal use in Osnabrück/Germany or that expectations of the customer exceeding this are fulfilled or that the goods are free from rights/claims of third parties outside the Federal Republic of Germany.

2. In the case of justified complaints, the customer can demand supplementary performance. Supplementary performance takes place at the discretion of AVERMANN by removal of the defect or delivery of new goods free of defects.

3. If, in the end, supplementary performance fails, the customer can, at his choice require compensation (reduction) or cancellation of contract (withdrawal) in accordance with statutory provisions.

4. The above rights of the customer require that he has complied duly with his obligations to investigate and file complaints. Complaints should be made in writing, giving the type and extent of the deviation from the agreed and usual condition and suitability for use in Osnabrück/Germany.

5. AVERMANN is liable to the customer for damages, provided that the customer makes claims for damages based on intent or gross negligence. Except in the case of a deliberate breach of contract perpetrated by AVERMANN, the liability for damages of AVERMANN is, however, limited to typically foreseeable damages, i.e. the compensation of indirect damages such as lost profits or loss of production is ruled out.

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6. Liability for normal wear and tear and damage caused by inappropriate or incorrect use is ruled out. If user manuals, operating instructions, safety instructions and maintenance instructions are not complied with, modifications made to the products, parts replaced or materials not conforming to the original specifications used, then any liability becomes null and void unless the customer is able to successfully disprove the correspondingly substantiated allegation that the fault resulted from any of the above circumstances.

7. Subject to an explicit written agreement stating otherwise, used goods are sold without warranty of any kind unless an intentional or grossly negligent breach of contract by AVERMANN exists.

8. AVERMANN shall not be liable for defects in parts or components supplied by the customer or provided by a third party on his behalf or for defects in the end product attributable to the faultiness of such components.

Article 7 Industrial property rights

1. AVERMANN accepts liability in respect of the customer that the goods are free from the property rights of third parties in the Federal Republic of Germany.

2. A precondition for this is, however, that the customer informs AVERMANN immediately of claims from property rights brought against him by third parties and that he proceeds in his handling of the matter and the pursuit of his rights in consultation/collaboration with AVERMANN. Should one of these conditions not be fulfilled, AVERMANN will be released from its obligation. If a violation of protection rights ensues for which AVERMANN is conditionally liable and if, as a result, the customer is completely or partly forbidden by law from using the goods, then AVERMANN, at its own expense and at its own option, will:

- obtain for the customer the right to use the goods or
- design the goods without protection rights or
- replace the goods with another item which violates no protection rights, or
- take back the goods against reimbursement of the price paid by the customer.

3. If the customer undertakes modifications on the goods, the incorporation of add-on devices or combination of the goods with other equipment or devices and if thereby the protection rights of third parties are violated, the liability of AVERMANN becomes void.

4. Likewise, AVERMANN is not liable for the violation of the protection rights of third parties for goods produced according to drawings, developments, specifications or other data provided by the customer or for a use not foreseeable by him. The customer is, in these cases, to indemnify AVERMANN against claims from third parties.

5. The customer is not entitled to more far-reaching or other claims arising from the violation of the protection rights of third parties. Particularly, AVERMANN will not make good any consequential losses such as loss of production or loss of use and loss of profit. These limitations of liability shall not apply in cases of mandatory liability based on intent or gross negligence or violation of essential contractual obligations or absence of guaranteed features or predictable damages as are typical of the contract. The right of the customer to withdraw from the contract remains unaffected.

Article 8 Total liability

1. Further liability for damages beyond that provided for in Articles 5, 6 and 7 is ruled out, regardless of the legal nature of the asserted claims. If AVERMANN has to pay damages under Articles 5, 6 und 7, this shall amount to 0.5 % for every full week of the delay or non-delivery, in total, however, to a maximum of 15% of the value of that part of the overall delivery which cannot be used in time or in accordance with contract as a result of the delay. More extensive damage claims are ruled out. The above-mentioned limitation does not apply where there is intent or gross negligence on the part of AVERMANN.

2. Insofar as the liability of the AVERMANN is, in accordance with these conditions, ruled out, this also applies for the personal liability of the representatives, agents or assistants and employees of AVERMANN.

3. Where AVERMANN is not liable for intent or the customer's claim is not already statute-barred, in cases of actions for damages, the customer is obliged to bring these within a limitation period of 6 months from rejection of the claim by AVERMANN.

Article 9 Reservation of ownership

1. All delivered goods remain the property of Firma AVERMANN until full payment of all receivables owed to AVERMANN arising from the business relationship with the customer, including all claims on current account balances.

In the event of a breach of conduct by the customer, particularly in the case of delay of payment, AVERMANN is entitled to take back the purchase goods. The act of taking back the purchase goods by AVERMANN amounts to a cancellation of the contract. After taking back the purchase goods, AVERMANN has the right to realise them and any proceeds from this realisation - less reasonable realisation costs - will be deducted from the customer's payables.

2. The customer is obligated to treat the reservation-of-ownership goods with care and especially to sufficiently insure them for their replacement value against the risks of fire, water and theft at his own cost. This also applies to materials and consumable items placed at the building site by AVERMANN for the execution of its contractual obligations, where these are identifiable to the customer, especially such materials and consumable items as are named in the offer and/or the confirmation of order of AVERMANN. Insofar as maintenance and servicing work is necessary, the customer must carry this out in good time at his own expense.

3. The customer is entitled to resell the purchased goods in the proper course of business; however, he shall surrender to Firma AVERMANN in advance all receivables due to him from his customers or third parties up to the final total of our invoice, irrespective of whether the item of sale was sold after or without further processing. The customer shall remain entitled to effect collection of this debt even after assignment. The right of AVERMANN to collect the debt itself remains unaffected by this. However, AVERMANN undertakes not to collect the debt if the customer meets his payment obligations from the proceeds, does not default on his payments, and especially if no application is made to initiate a settlement or insolvency process or a suspension of payment has been noted. If this is the case, however, then AVERMANN may require that the customer disclose the claim assigned and the debtor in question, make all indications required for collection, surrender the relevant documents, and notify debtors (third parties) of such assignment of claims. AVERMANN shall accept the assignment.

4. The processing or transformation of the purchased goods by the customer is always done on behalf of AVERMANN. If the purchased item is processed with other items not belonging to AVERMANN, then AVERMANN shall acquire co-ownership of the new item in the ratio of the objective value of the purchased item in relation to the other items processed at the time of processing. Otherwise, the same terms apply to the item produced by processing as to the purchased article supplied subject to reservation of ownership.

5. If the purchased item is inseparably combined with other items not belonging to AVERMANN, then AVERMANN shall acquire joint-ownership in the ratio of the objective value of the purchased item in relation to the other items combined at the time of combining. If the combining takes place in such a manner that the customer's item is to be regarded as the main component, it is considered agreed that the customer transfers proportional co-ownership to AVERMANN. The customer shall retain the resulting sole or co-ownership on behalf of AVERMANN.

6. The customer shall also assign to AVERMANN, claims which accrue to him through the possible combination of the purchase item with a property against a third party, to secure its claims against him. AVERMANN shall accept the assignment.

7. AVERMANN undertakes, at the customer's request, to release the collateral to which it is entitled to the extent that its value exceeds the value of the secured accounts receivable by more than 20%; the choice of the securities to be released shall lie with AVERMANN.

8. For deliveries outside the Federal Republic of Germany for which the above-mentioned material security interests/rights cannot be effectively agreed, for all outstanding accounts receivable from the business relationship between the customer and AVERMANN, it is considered agreed that those material security interests/rights which approximate most closely to the above-mentioned security interests and are permissible and possible under the respective jurisdiction apply.

Article 10 Special provisions for installation services

1. The customer is, at his own expense, to take all measures necessary to ensure fast installation. This includes in particular: access roads, installation and storage area must be levelled at floor level and able to take the load of heavy transport and lifting gear. The preparation and implementation of the earth moving, foundation, casting, construction and scaffolding work including supply of the construction materials needed for this and the parts to be assembled at the point of use, if these services are not to be performed by AVERMANN under the terms of the contract. The work of preliminary operations must be so far advanced that installation by the fitters of AVERMANN can commence on schedule and be carried out without interruption. Existing substructures must be repaired, foundations must be completely dry and set. It is particularly important that the customer obtain official authorisations in good time, where this is his responsibility.

2. The customer is, at his own expense, to support AVERMANN during installation. This includes in particular: the provision of power, water etc. including the necessary connections to the point of use, adequate lighting of the building site, the provision of suitable holding areas, storerooms and recreation rooms and sanitary facilities. If the customer is, in spite of being requested and receiving a deadline, unable to provide particular services, these can - where possible - be carried out by AVERMANN and the resulting costs charged to the customer. In the event of installation being carried out abroad in accordance with instructions, all entry permits, work permits and other permits necessary are to be obtained by the customer at his own expense.

3. All small parts additionally required during installation which are not specifically listed and are required for taking into service due to extraordinary, unforeseeable local conditions and/or at special request due to conditions set by the local supervisory authority, will be charged separately on verification.

4. Interruptions in the installation work due to lack of connections, construction work, power outages etc. for which AVERMANN is not responsible, will be charged to the customer.

5. Any flat-rate payments for installation possibly agreed will not include working on Sundays and holidays. Installation flat-rate payments only apply if all preparation work on-site has been completed. Additional work, which does not belong to the normal scope of supply, will be calculated on a labour and costs basis. Waiting times during attendance or additional journeys made by fitters to put the machinery into service, which are attributable to the fault of the customer, will be charged to him.

Article 11 Final provisions

1. For the legal relationship with the customer, the UN Convention of 11 April 1980 on Contracts for the International Sale of Goods (CISG) in the English language version and the accepted standard practice in Osnabrück/Germany apply. The UN Sales Convention applies over its scope of application and notwithstanding the reservations of signatories to the convention for all contracts subject to these International Terms and Conditions of Sale and Delivery. When commercial clauses are used, the Incoterms apply in their respective authoritative version in consideration of the provisions adopted in these International Sales Conditions. For the conclusion of contracts including accords on legal and arbitral competences and for the contractual rights and obligations of the parties also including pre-contractual and other secondary obligations and for interpretations, the UN Sales Convention, in combination with these International Terms and Conditions of Sale and Delivery, applies exclusively. Outside the application of the UN Sales Convention, the legal relationships of the parties shall be determined according to unstandardised Swiss law.

2. Place of performance, payment and delivery for all obligations from the legal relationship of AVERMANN with the customer is Osnabrück/Deutschland. For all disputes arising out of or in connection with contracts for which the application of these International Terms and Conditions of Sale and Delivery is provided, will be finally settled under the rules of arbitration of the ICC (International Chamber of Commerce) Paris to the exclusion of recourse to regular legal proceedings. The Court of Arbitration comprises three arbiters, one each of whom is nominated by AVERMANN and the customer. In disputes with a sum in dispute below 50,000.00 € it comprises one arbiter. The Court of Arbitration sits in Paris/France. The language of the court is English. AVERMANN is, however, entitled, instead of bringing a case in arbitration, also to bring a case before the state courts in Osnabrück/Germany or at the business location of the customer or other competent courts on the grounds of national or foreign law. It is, however, ruled out for the customer to bring a case before a national court. This also applies to any possible counterclaim.

3. Should individual provisions of the contract with the customer, including these International Terms and Conditions of Sale and Delivery be or become totally or partly ineffective, then the validity of the remaining provisions is not thereby affected. That provision is to be wholly or partially replaced with a provision the commercial success of which most closely approaches that of the ineffective provision.

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