

## **Terms and Conditions for the supply of machine tools for domestic business Germany**

to be applied to transactions concluded with

- a person who, when concluding the contract, acts for the purposes of his/her commercial or self-employed professional activities (entrepreneur);
- legal persons under public law or a special fund under public law ("öffentlich-rechtliches Sondervermögen")

### **1. General**

- 1.1. Any and all deliveries and services are governed by these Terms and Conditions and by specific contractual agreements, if any. Deviating terms and conditions of purchase of the customer do not become part of the contract, not even if the order is accepted. In default of any special agreement, a contract is deemed concluded upon written confirmation of the order by the supplier.
- 1.2. The supplier reserves all property rights and copyrights in samples, cost estimates/quotations, drawings and similar information of tangible or non-tangible quality including in electronic form; they must not be made available to third parties. The supplier undertakes to make information and documents which are designated by the customer as confidential available to third parties with the customer's consent only.

### **2. Price and Payment**

- 2.1. In default of any special agreement to the contrary, the prices are ex works, including loading at the works but exclusive of packaging. The prices are exclusive of the value-added tax which has to be paid on top at the statutory rate valid at the time.
- 2.2. In default of any special agreement to the contrary, payment is due and payable without deduction to the supplier's account as follows:
  - 30% immediate due from the date of the down payment invoice,
  - 60% within 10 days from the notification to the customer that the machine is ready for dispatch,
  - the remainder within one month from the passing of the risk.
- 2.3. The customer is only entitled to withhold payments if and to the extent that his counter-claims are undisputed or have been established by a final non-appealable court decision (*res judicata*).
- 2.4. The customer is only entitled to set off his counterclaims arising from any other legal relationships if and to the extent that they are undisputed or have been established by a final non-appealable court decision (*res judicata*).

### **3. Delivery time, delay in delivery**

- 3.1. The delivery time is specified in the agreements concluded between the contracting parties. Compliance with such delivery times by the supplier requires that all commercial and technical issues have been clarified between the contracting parties and that the customer has fulfilled all obligations incumbent on him such as the provision of any required official certificates or permits or the down payment. If this is not the case, the delivery time will be extended correspondingly. This does not apply if and to the extent that the supplier is responsible for the delay.
- 3.2. If the supplier is unable to meet binding delivery dates for reasons for which the supplier is not responsible (non-availability of the performance), the supplier shall inform the purchaser thereof without undue delay and at the same time notify the purchaser of the expected new delivery time. If the service is also not available within the new delivery period, the supplier shall be entitled to withdraw from the contract in whole or in part; any counter-performance already rendered by the purchaser shall be refunded without delay. A case of non-availability of the performance is assumed in particular in cases of non-timely self-delivery by suppliers if a congruent hedging transaction has been concluded, neither the supplier nor its own supplier is at fault or the supplier is not obliged to procure in the individual case.
- 3.3. The occurrence of the delay in delivery shall be determined in accordance with the statutory provisions. In any case, however, a reminder by the purchaser shall be required. If the supplier is in default of delivery and the purchaser suffers damage as a result, the purchaser may claim a compensation as liquidated damages for the damage caused by the delay. The liquidated damages shall amount to 0.5 % of the net price (delivery value) for each completed calendar week of the delay, but in total not more than 5 % of the value of that part of the entire delivery which cannot be used on time or in accordance with the contract as a result of the delay. The supplier reserves the right to prove that the purchaser has not suffered any damage or that the damage is significantly less than the aforementioned liquidated damages.
- 3.4. The delivery time is deemed complied with if the goods to be delivered have left the supplier plant by the expiry of the delivery time and the customer has been notified of the readiness for dispatch. This also applies in the case that acceptance and approval of the goods are necessary.
- 3.5. If the purchaser is in default of acceptance, fails to cooperate or if delivery is delayed for other reasons for which the purchaser is responsible, the supplier shall be entitled to claim compensation for the resulting damage including additional expenses (e.g. storage costs). In this case, a compensation as liquidated damages in the amount of € 250.00/calendar day shall be paid, starting with the delivery date or - in the absence of a delivery date - with the notification that the goods are ready for shipment. If non-compliance with the delivery time is due to force majeure, industrial riots or other events beyond the supplier's control, the delivery time will be extended by an adequate period. The supplier will inform the customer of the beginning and the end of such circumstances as soon as possible.

- 3.6. The customer is entitled to withdraw from the contract if the entire performance becomes definitely impossible for the supplier before the risk has passed. Moreover, the customer is also entitled to withdraw from the contract, if in the context of an order the execution of some part of the delivery becomes impossible and the customer has a legitimate interest in refusing partial delivery. If this is not the case, the customer is obliged to pay such portion of the contractually agreed price as corresponds to the partial delivery. The same applies in the case of the supplier's personal inability to perform ("Unvermögen"). For the rest, section 7.2. applies.
- 3.7. If the impossibility or inability to perform occurs during a period where the customer is in default of acceptance or if the customer is solely or clearly for the most part responsible for said circumstances, the customer continues to be obliged to render the consideration.
- 3.8. Any further claims arising from the delay in delivery are exclusively subject to the provisions in section 7.2 of these Terms and Conditions.

#### **4. Passing of risk, commissioning, acceptance and approval, performance by third parties**

- 4.1. The risk passes to the customer as soon as the goods to be delivered have left the supplier plant, even in the case that partial deliveries are made or the supplier has agreed to also perform other services such as delivery and handover or installation or has accepted to pay the costs of dispatch. Any agreed upon acceptance and approval of the goods must take place without undue delay ("unverzüglich") on the date of acceptance and approval or otherwise, if the first alternative is infeasible, after notification by the supplier of the readiness for acceptance and approval. The customer is not allowed to refuse acceptance and approval of the goods in the case of a minor defect.
- 4.2. The supplier is allowed to assign the claim to his financing partner. The financing partner as the owner of the claim is entitled to have the commissioning of any delivered machine done by a third party designated by him if he holds that this is necessary for collecting the assigned claim. The customer can reject such third party for good cause (e.g. lacking skill or qualification) without undue
- 4.3. If the dispatch resp. the acceptance and approval are delayed or omitted for reasons not attributable to the supplier, the risk passes to the customer from the day of notification of the readiness for dispatch resp. the readiness for acceptance and approval. The supplier undertakes to take out at the customer's expense such insurance policies as are requested by the customer.
- 4.4. Partial deliveries are permissible only to the extent that they are reasonably acceptable for the customer.

#### **5. Reservation of title**

- 5.1. The supplier reserves title to the delivered goods until all payments under the supply contract have been received. If installation or assembly services are to be performed, title to the delivered goods will only pass to the customer after receipt of the remuneration payable for the installation/ assembly resp. of such portion of the payment as corresponds to the installation/ assembly services.
- 5.2. The supplier is entitled to insure the delivered goods at the customer's expense against theft, breakage, damage by fire, water or other damage unless the customer has demonstrably taken out such an insurance policy himself.
- 5.3. The customer may only sell, pledge or transfer title to the delivered goods with the prior written consent of the supplier. In the case of an attachment or seizure or other disposal by third parties, the customer is obliged to inform the supplier without undue delay ("unverzüglich").
- 5.4. In the case that the customer is in breach of the contract, in particular in the case of non-payment despite maturity, the supplier is entitled to withdraw from the contract as is provided for by the statutory provisions and to claim return of the delivered goods relying on both the reservation of title and the withdrawal. Neither the fact that the supplier invokes the reservation of title nor the seizure of the delivered goods by the supplier must be deemed to constitute withdrawal from the contract.
- 5.5. If the customer resells the delivered goods in the ordinary course of business, the customer already now assigns to the supplier any and all claims up to the final invoice amount (including VAT) which will accrue and will be owing to him by his own customers or third parties from the resale, regardless of whether the delivered goods have been resold before or after they have been processed. The customer is still entitled to collect these claims even after the assignment. This is without prejudice to the supplier's right to collect the claim himself. However, the supplier undertakes to abstain from collecting the claims as long as the customer satisfies his payment obligations out of the amounts collected by him and, in particular, as long as no petition in insolvency has been filed and the customer has not ceased payments. However, if this is the case, the supplier may demand the customer to disclose and specify to him the assigned claims and the respective debtors, to provide all information required to collect the claims, to hand over the corresponding documents and to notify the debtors (third parties) of the assignment.
- 5.6. Any processing or transformation of the delivered item by the customer is always deemed to be carried out for and on behalf of the supplier. If the delivered item is processed together with other items not belonging to the supplier, the supplier will share title to, and become co-owner of the new item in the proportion of the value of the delivered item to that of the other processed items at the time of the processing. Apart from that, the item generated by the processing is subject to the same regulations as the goods delivered subject to reservation of title.
- 5.7. If the delivered item is inseparably mixed with other items not belonging to the supplier, the supplier will share title to, and become co-owner of the new item in the proportion of the value of the delivered item to that of the other mixed items at the time of the mixing. If the mixing is made in the way that the item of the customer must be considered as the main item, the parties are deemed to have agreed that the customer transfers to the supplier pro rata ownership of the new item. The customer retains the so generated sole-ownership or co-ownership item for the supplier.
- 5.8. The customer assigns to the supplier those claims by way of security for the supplier's claim which arise against a third party from the union of the delivered item with a real estate.

- 5.9. The supplier undertakes to release, upon the customer's request, the security provided to him to the extent that the value of the security exceeds the claims to be secured by more than 20%. The part of the security to be released is chosen by the supplier in its sole discretion.
- 5.10. If a petition in insolvency is filed, the supplier will be entitled to withdraw from the contract and demand immediate return of the delivered goods.

## 6. **Warranty**

The supplier gives warranty of quality and title of the delivered goods excluding at the same time any further rights and claims of the customer – subject to the provisions in section 7. – as is described in the following:

### 6.1. **Defects of quality of new delivered goods:**

- 6.1.1. All parts which prove to be defective within 12 months from delivery due to any circumstance having occurred before the passing of the risk must, at the supplier's choice, either be subsequently improved or substituted by new goods. The supplier must be informed of any detected defects in writing without undue delay ("unverzüglich"). Any parts that have been substituted become the property of the suppliers.
- 6.1.2. The customer is obliged, after consultation with the supplier, to grant to the supplier the time and opportunity which the suppliers considers necessary for any subsequent improvements or substitute deliveries; otherwise, the supplier is released from the liability for any consequences resulting therefrom. Only in urgent cases where the operating safety is endangered or for the prevention of unreasonably high damage, in which case the supplier has to be informed immediately, the customer will be entitled to remedy or eliminate the defect himself or through third parties and to claim reimbursement of the necessary expenses incurred thereby.
- 6.1.3. If and to the extent that the complaint proves to be justified, the supplier bears the expenses necessary for the replication, to the extent that his does not entail a disproportionate burden on the supplier. In case of the sale of a newly manufactured item, the supplier also replaces the expenses incurred by the customer in the supply chain as part of recourse claims in the scope of its statutory obligation. If the customer relocates the delivered goods, in whole or in part, from the contractually agreed place of installation to another place, the customer will bear any additional costs incurred as a result of such relocation, including but not limited to any additional travelling expenses incurred by the supplier.
- 6.1.4. In the event of a justified complaint, the supplier bears the necessary costs for the rectification of defects, unless there is a disproportionate burden on the supplier.
- 6.1.5. The customer is entitled to withdraw from the contract within the limits of the law if the supplier, in consideration of the exemptions provided for by law, fails to duly fulfil his obligations within a grace period granted to him for the purpose of subsequent improvement or substitute delivery due to a defect of quality. In the case of a minor defect, the customer will only be entitled to reduce the contractually agreed price. Apart from that, the right to reduce the contractually agreed price is excluded.
- 6.1.6. Any further rights and claims are exclusively governed by section 7.2 of these Terms and Conditions.
- 6.1.7. The warranty is in particular excluded in the following cases: Unsuitable or improper use, defective installation/ assembly resp. commissioning by the customer or third parties, regular wear and tear, defective or careless treatment, improper maintenance, unsuitable operating means or facilities, defective construction work, unsuitable building ground, chemical, electrochemical or electric influences – unless the supplier is responsible for such circumstances.
- 6.1.8. If the customer or a third party carries out the subsequent improvement improperly, the supplier will accept no liability for the consequences resulting therefrom. The same applies to any changes made to the delivered goods without the prior consent of the supplier.

### 6.2. **Special regulation for defects of quality of used goods:**

- 6.2.1. Notwithstanding the preceding provisions, the warranty for defects of quality of used goods is excluded. This does not apply in the case of any fraudulently concealed defects or the breach of a guarantee. Apart from that, the contractual rights and claims of the customer remain unaffected even in the case of delivery of used goods.
- 6.2.2. In the event of the Supplier and the Customer agreeing upon a warranty for used supplied items in individual cases, deviating from the foregoing Section 6.1, the provisions of Sections 6.1.1 to 6.1.8 shall apply accordingly.

### 6.3. **Defects of title**

- 6.3.1. If the use of the delivered goods entails an infringement of industrial property rights or copyrights in Germany, the supplier generally will procure for the customer at the supplier's expense the right to continue the use of the delivered goods or will modify the delivered goods in a manner which is reasonably acceptable for the customer to the effect that the infringement of the protective rights is eliminated. If this cannot be done at economically reasonable conditions or within a reasonable period, the customer will be entitled to withdraw from the contract. In the circumstances stated above, also the supplier will be entitled to withdraw from the contract. In addition, the supplier will indemnify the customer from any and all undisputed claims and claims of the owner of the respective protective right that have been established by a final non-appealable court decision (*res judicata*).
- 6.3.2. The supplier's obligations in the case of an infringement of industrial property rights or copyrights are exhaustively specified in section 6.3.1, subject to the provisions of section 7.2.
- 6.3.3. They only apply if
  - the customer informs the supplier of any invoked industrial property rights or copyrights without undue delay ("unverzüglich")
  - the customer supports and assist the supplier to a reasonable extent in the defence against the asserted claims resp. enables the supplier to carry out modification measures according to section 6.3.1,

- the right to take all defence measures including out-of-court settlements is reserved to the supplier,
- the defect of title is not based on an instruction of the customer and
- the infringement of the right was not caused by any unauthorized modification of the delivered goods or by any use of the delivered goods contrary to the contract.

## **7. Liability**

- 7.1. If the delivered goods cannot be used by the customer as agreed in the contract due to the supplier's fault as a result of any omitted or defective execution of pre-or post-contractual proposals or recommendations or due to the breach of any other ancillary duties under the contract, including but not limited to the duty to provide instructions for the operation and maintenance of the delivered goods, the provisions contained in sections 6. and 7. 2 apply *mutatis mutandis*; any further rights and claims of the customer are excluded.
- 7.2. The supplier is only liable – regardless of the legal cause – for any damage other than that caused to the delivered goods as such:
- in the cases of intentional conduct and grossly negligent conduct,
  - in the case of intentional or negligent injury of the life or limb or health,
  - in the case of fraudulently concealed defects or defects for which the supplier has given a guarantee of non-existence,
  - in the case of defects of the delivered goods if and to the extent that the liability for personal injury or damage to privately used property is based on the "Produkthaftungsgesetz" (German Product Liability Act).

In the case of an intentional or negligent breach of fundamental duties under the contract, the supplier will also be liable for slight negligence, the liability will however be limited to the reasonably foreseeable damages typically occurring with contracts of the kind in question. Any further claims are excluded

## **8. Limitation**

All claims of the customer – regardless of the legal cause on which they are based – become timebarred after expiry of 12 months. This also applies to the limitation period of recourse claims in the supply chain according to § 445b para 1 German Civil Code (*BGB*), provided that the last contract in this supply chain is not a consumer goods purchase. The expiry suspension according to § 445b para 2 German Civil Code (*BGB*) remains unaffected. In the case of intentional or fraudulent conduct and in the case of claims under the "Produkthaftungsgesetz" (German Product Liability Act), the limitation periods prescribed by law will apply. They also apply to defects of a construction ("Bauwerk") and for delivered goods which, according to their regular purpose, have been used for a construction ("Bauwerk") and have caused the defect of such construction ("Bauwerk").

## **9. Use of software and technical data**

If and to the extent that the goods include software or digital technical data (such as 3D machine models), the supplier hereby grants to the customer a non-exclusive, non-transferable, non-sublicensable license to use such software or data, together with its documentation, solely for customer's internal purposes in connection with the purchased goods; in case of 3D machine models, this includes checking machine interference on a CAD/CAM system, shopfloor or factory planning, or similar purposes. Use for any other purpose, including integration into third-party systems or redistribution, is prohibited. Unless and to the extent that mandatory statutory law (in particular Sections 69d and 69e of the German Copyright Act) expressly permits otherwise or the supplier has given its prior written consent, the customer shall not, directly or indirectly, (a) sell, lease, redistribute, transfer or permit the use of the software or digital data; (b) copy, modify, translate, reverse engineer, decompile, disassemble, or create derivative works based on the software or digital data; (c) remove any proprietary notice, labels or marks of the supplier from the software or digital data; or (d) disable or circumvent any access control or related device, process or procedure established with respect to the software or digital data. All other rights in the software and digital technical data, including any copies, remain the exclusive property of the supplier or its licensors. Any grant of sublicenses is prohibited.

## **10. Applicable law, place of jurisdiction**

- 10.1. All legal relations between the supplier and the customer are exclusively governed by the law of the Federal Republic of Germany applicable to the legal relations between German parties.
- 10.2. The competent court at the supplier's domicile will have jurisdiction. The supplier is however also entitled to sue the customer at the customer's principal domicile.