

## **I. General**

1. The following Terms and Conditions of Sale, Delivery and Payment are valid exclusively to all our deliveries and services. They apply equally to all future business transactions between the contract parties without the necessity of a renewed indication and even when not explicit referring to them in any future contracts. They also apply for service and deliveries without reservation to the purchaser despite different and even known terms and conditions of the contract party.

2. We do not accept any terms and conditions from the purchaser that deviate or oppose from our Terms of Sale, Delivery and Payment. We do even not accept other Terms of Sale, Delivery and Payment when the contract mentions without reservation.

3. Our Terms and Conditions of Sale, Delivery and Payment are publicly available through our Internet homepage and catalogues. We refer the purchaser to our Terms and Conditions of Sale, Delivery and Payment in our price lists, invoices, emails and other forms.

## **II. Offers, Contract**

1. All our offers to the purchaser are subject to change and only become binding when the order is placed. The contract becomes binding only when the purchaser accepts our offer in responding with a written order due in time and when we accept the purchasers order by sending an order confirmation or by unconditionally making the ordered goods or service available.

2. Oral amendments and agreements to the contract shall not become effective until we confirmed them in writing.

3. The purchaser cannot assign his rights and corresponding claims from this contract.

4. Specifications and technical data of our brochures, catalogues, website or any other advertising activities are neither a guarantee for the quality and durability of the goods to be delivered by us unless

the specifications have been agreed in individual contracts.

4. Given expertise about suitability, performance and application possibilities do not release the purchaser executing own tests with our goods to figure out whether the products are suitable for the intended applications.

5. Given specifications on our goods rely on operation, application and local conditions and do not guarantee of durability and quality.

## **III. Prices, Payment**

1. Prices given are ex works prices. Handling and loading in our works or our warehouse are included, packaging excluded. Value added tax valid on the day of delivery in conformity with the applicable provisions of the performance or delivery country is added.

2. Packaging and transport costs for correct dispatch of the goods will be added, as well as cartage costs and possible country specific fees for dispatch abroad and agreed insurance.

3. Training, commissioning and installation works are not included and will be invoiced separately. The value has to be agreed upon on a case to case basis.

4. Our prices agreed in the order confirmation are valid for the contract. For not mentioned prices the price in our actual valid price list is valid.

5. For price increases caused by exchange rates or by our suppliers we reserve the right to increase our prices accordingly. This does not apply for fixed prices.

6. In case of price changes after the contract conclusion we inform the purchaser at least 30 days before the changed price will be valid. No written denial by the purchaser within a period of 7 days results in an acceptance of the price increase. This does not apply for fixed prices.

7. Our invoices for machines are due within 7 days after delivery without deductions unless a different payment date was agreed.

Our invoices for parts are due within 7 days of the invoice date without deductions unless a different payment date was agreed. Our invoices for service are due within 7 days of the invoice date without deductions unless a different payment was agreed. No cash discount will be granted for payment. Any agreed recorded special discount is only valid on the invoice amount less packaging, logistics, carriage, boxes and palettes.

8. Default of payment according to § 286 II no. 2 BGB (German Civil Code) for the purchaser starts when the due date mentioned in the invoice is exceeded.

9. All outstanding receivables become due and payable immediately after 7 days of the due date mentioned in the invoice passed. Not paid due invoices, or arisen circumstances reducing the creditworthiness significantly and question the purchaser's ability to pay, entitles us to make the entire balance of the dept due for payment. In this case we may refuse all further deliveries, service or any other performance to the purchaser. In case of the purchaser is in default of payment we may apply an interest rate of 9.9% above the basic interest rate to compensate additional damage.

10. The purchaser shall only have a right to balance or withhold claims or receivables which are undisputed and legally determined.

## **IV. Delivery Period**

1. Our delivery periods are only approximate unless a fixed time was agreed and written in the contract. The purchaser may withdraw in written from the contract in case of we are responsible for the delay and after the agreed delivery period in the contract is exceeded plus an reasonable additional extension of time, which must be at least 14 days.

2. The delivery period do not start until an agreement of all details of the performance, including all terms and conditions of the transaction are confirmed by the purchaser. The delivery period shall not start before the purchaser meet his obligations as fixed in the contract,

as for instance an advanced payment, permits, supply of goods and materials, provision of documents, etc.

3. The delivery period shall be approximately extended in case of force majeure and other unforeseen circumstances for which we are not responsible, e.g. strike, lock-outs, delays or failures of preliminary suppliers, fire or water, energy failure, stoppages, transport and traffic difficulties, as well as lack of raw materials. For a delay of more than 4 weeks, we as well as the purchaser are entitled to withdraw from the contract in writing without any compensation claims and the regulations mentioned under section VI.

4. Partial delivery and service is admissible to the extent, that it is reasonable for the purchaser. They are considered as independent legal transactions which can be invoiced separately.

5. Fulfilling our delivery and service obligation demanding a proper fulfillment of obligations on the part of the purchaser. We reserve the right to claim the defence of nonperformance of the contract.

6. If the terms and conditions of payment are not fulfilled by the purchaser, if the delivery is not accepted in due or refused by the purchaser, we are entitled to withdraw from the contract and may claim a damage compensation in the amount of 25% of the total order value for series products and 75% of the total order value for individual products, the later is not permitted if the purchaser proves minor respectively no damages or expenses. Payment obligations of the purchaser still remain unaffected.

7. If at the request of the purchaser the dispatch or delivery is delayed, we may invoice either the actual incurred storage and maintenance costs or a flat rate in the amount of ½% of the invoiced value per month. The purchaser reserves the right to prove that no or lower damages have been incurred.

## **V. Transfer of Risk, Shipping**

1. Delivery is made ex our works or warehouse and must be collected there by the purchaser at his risk and expense, unless it is otherwise agreed in writing in the contract. The risk of accidental destruction, deterioration or loss of the goods

shall pass to the purchaser when the goods are ready for dispatch and the purchaser has received our notification of readiness.

2. For other in the contract in writing agreed deliveries than ex works or ex warehouse the risk of accidental destruction, deterioration or loss of the goods shall pass to the purchaser when the goods are handed to the forwarder. The purchaser is responsible for safe loading of the goods.

3. The risk shall pass to the purchaser no later than the dispatch time of the goods. We accept no liability for the most favorable transport time or the most favorable freight charges.

## **VI. Security, Retention of Title**

1. We retain title to all goods delivered to the purchaser until all our claims for payment against the purchaser under the business relationship including any future claim under contracts signed simultaneously or later have been satisfied by the purchaser in full. This shall also apply, if either individual claims for payment or all of our claims for payment have been included in a current account, and the balance was struck and accepted. In the event the purchaser acts in breach of contract, in particular, there is a delay in payment, we, on demand of payment, shall be entitled to take back the delivered goods and simultaneously declare rescission of the contract. In this event, the purchaser is obligated to return the delivered goods to us.

2. The purchaser is entitled to dispose of the delivered goods in the ordinary course of business, provided and to the extent that the conditions to secure our claims for payment specified in section VI 3. to 5. have been fulfilled. Any violation of the obligation contained in the aforementioned sentence gives us the right to terminate the entire business relationship with the purchaser with immediate effect.

3. We and the purchaser hereby agree that on conclusion of an individual sales contract all claims of the purchaser arising out of the future resale or lease of the delivered goods to a third party shall be assigned to us to serve as security for all our claims that may arise out of its business relationship with the purchaser. The purchaser shall, however, remain entitled to collect the assigned claims, as long as we have not requested that the

assignment be notified to the third party in question. The purchaser may not re-assign any claims that have already been assigned to us. The purchaser is obligated to assign to us the title or any other right to any goods, machinery parts or used machines of any type that the purchaser has accepted in lieu of payment as soon as the purchaser acquires such title or other right. The purchaser must hold the above-mentioned goods in custody for us, take proper care of them, and insure them as appropriate.

4. If the security interests provided in section VI 1. to 3. have not been legally recognized in the country where the delivered goods are located, or are not fully enforceable, then the purchaser is obligated to notify us immediately to this effect and offer security of equivalent value.

5. The purchaser shall process or transform any goods supplied by us under retention of title only on behalf of us. In the event the item under retention of title is processed together with other goods not owned by us, we acquire co-ownership of the new item in proportion to the value of the item supplied by us in comparison with the value of the other processed goods. This value is to be determined at the time of processing.

6. In the event that our goods are combined with other movable goods to form one composite good, or are blended inseparably with other goods, and if the other goods are regarded as the main item, the purchaser shall assign us a proportionate co-ownership to the item, insofar as the purchaser owns the main item.

7. The purchaser is to keep the goods to which we have ownership or co-ownership in safe custody. The same conditions applicable to the goods under retention of title shall apply to the item after processing or transformation.

8. If the value of the securities granted to us under section VI 1. to 5. exceeds our claims arising out of the business relationship with the purchaser by more than 10%, we shall, at the request of the purchaser, release securities of our choice, to the extent that the threshold is exceeded.

9. The purchaser must insure the goods to which we have retained title against theft, breakage, fire, water and other risks ordinarily insured against. We may require

the purchaser to prove that a suitable insurance policy has been taken out, and may, if necessary, take out insurance against the above-mentioned risks itself at the expense of the purchaser.

**10.** In case of seizure, attachment or any other intervention by any third party against the goods or claims in which we have a security interest, the purchaser must notify us thereof immediately, and must assist us with the enforcement of our rights. To the extent that it is not possible to request the third party in question to reimburse us for court or extra judicial fees, any such costs shall be borne by the purchaser.

**11.** If an application for commencing insolvency proceeding has been filed against the purchaser, we are entitled to rescind the contract with immediate effect and request immediate return of the delivered goods.

**12.** Sections VI, 1., 3. and 11. shall apply accordingly with regard to the goods, which may have been accepted by the purchaser in lieu of payment pursuant to section VI, 3.

## **VII. Warranty, Claims, Limitations**

**1.** The following warranty rules shall apply to the delivery of new machines and new spare parts. We do not take on any warranty for the delivery of used machines and spare parts. Our liability pursuant to section VIII shall remain unaffected by this exclusion of warranty.

**2.** We warrant, that the delivered goods are free from defects in accordance with current design and technical standards, provided that with respect to any defects, it can be proved that they were introduced through circumstances that occurred before risk passed to the purchaser, in particular due to a design fault, poor materials or defective workmanship. Any further warranty beyond the above-mentioned conditions is granted only if and to the extent that we have expressly assumed a guarantee for the quality of the delivered goods in the relevant individual sales agreement.

**3.** The purchaser may only assert a warranty claim provided that it first has examined the delivered goods for the existence of any defects within one week of delivery, and in the event of a defect, it has notified us immediately in writing of the defect. Any defect that could not be detected by a thorough examination

within this period shall be notified to us in writing immediately after detection. Delivery within the meaning of the first sentence of this Clause is deemed to be the time at which the delivered goods come under the control of the purchaser or could have come under the purchaser's control if the purchaser had not been at fault.

**4.** Changes in the design or specifications of goods that were made before delivery as part of general design or production changes at us shall not be deemed to be defects in the delivered goods, unless such changes render the delivered goods useless for the purpose intended by the purchaser.

**5.** The warranty against defects in the delivered goods shall comprise the remedy of defects either through repair or replacement, at our option. We receive title to any replaced parts.

**6.** In the event we fail to remedy the defects in question, the purchaser is entitled to specify a realistic period of time within which we must complete further repairs or replacement. If we once again fail to remedy the defect, then the purchaser may either request a reduction in the purchase price corresponding to the amount by which the value of the delivered goods was reduced due to the defect, or rescind the contract, at the purchaser's option. In the event of an insubstantial defect, the purchaser is only entitled to a reduction in the purchase price.

**7.** In agreement with us the purchaser shall arrange for us to have sufficient time and opportunity to carry out all repairs or replacements that are required in our judgment. If the purchaser does not do so, we are released from its warranty obligations and any liability arising out of those obligations. The purchaser is only entitled to remedy a defect covered by our warranty by itself or have it remedied by a third party at our expense if this is necessary to avert a dangerous risk to the safety of operations and/or to avoid a disproportionately high damage. The purchaser must notify us immediately in such an event.

**8.** Our warranty does not cover any incidental costs arising from the work required to remedy a defect, including, in particular, freight costs, import costs, customs duties, travel expenses, food, lodging and costs required to assign mechanics and temporary staff.

**9.** Our warranty for major components that have not been produced by us is limited to the assignment of its claims against the supplier of such components. In the event that justified warranty claims by the purchaser are not satisfied by the supplier of the components in question, even though the purchaser has taken all reasonable steps to enforce its claims, including the pursuit of legal proceedings, we shall, pursuant to the provisions of this section VII, assume secondary responsibility for fulfillment of the warranty. However, such secondary responsibility shall exclude responsibility for any costs incurred by the purchaser in pursuing its legal rights against the supplier of the components in question.

**10.** We are not liable for any damage unless it can be proven that such damage is a result of our fault. This applies in particular, but is not limited to:

- unsuitable or improper use
- normal wear and tear
- faulty assembly or putting into service by the purchaser or third parties
- faulty or negligent handling
- use of unsuitable water, fuel, oils and lubricants
- electrical, chemical or similar influences.
- use of unsuitable replacement materials and parts
- unsuitable processing materials (e.g. not pumpable mortars or any other media)

**11.** Our warranty obligations also expire, where the delivered goods are not maintained and serviced at the stipulated maintenance intervals by either us itself, any authorized dealer, or the purchaser or operator of the product according to our operating manual.

**11.** In the event that either the purchaser or any third party carries out repairs improperly, we are not liable for the consequences arising from this improper repair. The same shall apply to any alterations made to the delivered goods without the prior consent of us.

**12.** We may refuse to honor our warranty obligations as long as the purchaser has not fulfilled its contractual obligations.

**13.** The provisions laid down in this section are the final and exclusive provisions that govern our warranty obligations for delivered goods. Any further claims of the purchaser, in

particular for damage other than to the delivered goods themselves, are subject exclusively to the provisions of section VIII.

14. The exclusions and limitations of our liability set out in the foregoing provisions shall also apply to exclude and limit the personal liability of our employees and other staff as well as their representatives and persons appointed by us to perform its obligations.

15. Any claims by the purchaser, submitted for whatever legal reasons, shall become statute-barred after the expiry of 12 months. In the case of intentional or fraudulent conduct and in case of claims submitted pursuant to the provisions of the Product Liability Act, the statutory limitation terms shall apply.

#### **VIII. Liability for Ancillary Obligations**

1. If the purchaser is unable to use the goods in accordance with the contract due to a fault of us by having omitted or provided faulty advice or proposals, or due to the violation of other contractual ancillary obligations by us, in particular in instructions for the operation and maintenance of the delivered goods, the provisions of section VII. and VIII. 2. shall apply accordingly, excluding any further claims by the purchaser.

2. We only become liable for any damage caused to other than the delivered goods themselves, for whatever legal reasons, in the case of:

- willful intent on the part of us
- culpable infringement of life, physical well-being and health
- defects concealed fraudulently by us or a guaranteed lack of defects
- defects caused to the delivered goods to the extent that liability for personal or material damage resulting from goods that are used for private purposes is subject to the provisions of the Product Liability Act.

3. In the event of culpable infringement of contractual obligations amounting to a fundamental breach of contract, we are also liable for gross negligence by our employees not belonging to the senior staff. In the event of simple negligence, the afore-mentioned liability is limited to damage that is reasonably foreseeable and typical for that type of contract. Any further claims are excluded.

#### **IX. Returns of Goods**

1. The return of defect-free goods delivered by us is excluded.

2. Any exceptional agreed return in writing is only for defect-free goods and only results in a credit note to offset future deliveries.

3. Costs for processing, preparation and testing shall be deducted from the invoice amount by at least 20%, respectively a minimum amount of 50 Euro will be charged.

#### **X. Place of Fulfillment and Jurisdiction, Applicable Law**

1. Place of fulfillment and exclusive place of jurisdiction for all claims between us and merchants and corporate bodies under public law or special funds under public law shall be Tuebingen, Germany.

2. We shall also have the right to file claims against the purchaser at its place of jurisdiction.

3. Sole proper law is that of the Federal Republic of Germany. The application of the provisions governing the international sale of goods (CSIG – UN Sales Law) and the German international private law are expressly excluded.

4. For agreed international commercial terms are always latest versions of the Incoterms valid.

5. Should individual provisions of the above agreement be invalid, partially invalid or excluded by special agreement, the validity of the remaining provisions shall not be affected.

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