



## General Terms and Conditions of Delivery

### 1. Scope, Form

- 1.1 These General Terms and Conditions of Delivery ("**GTCD**") shall apply to all of our business relations with our customers ("**Customers**"). The GTCD shall only apply if the Customer is an entrepreneur (Sec. 14 of the German Civil Code – "BGB"), a legal entity under public law or a special asset under public law.
- 1.2 The GTCD shall apply in particular to contracts for the sale and/or delivery of movable goods ("**Goods**"), irrespective of whether we manufacture the Goods ourselves or purchase them from suppliers (Secs. 433, 650 BGB). Unless otherwise agreed, the GTCD in the version valid at the time of the Customer's order or, in any case, in the version last notified to the Customer in text form shall also apply as framework agreement for similar future contracts without our having to make reference to them again in each individual case.
- 1.3 Our GTCD shall apply exclusively. Differing, conflicting or supplementary general terms and conditions of the Customer shall only become part of the contract if and to the extent that we have expressly consented to their application. This requirement of consent shall apply in any case, for example even if we carry out the delivery to the Customer without reservation in the knowledge of the Customer's GTC.
- 1.4 Particular agreements made with the Customer in individual cases (including ancillary agreements, supplements and amendments) shall in any case take precedence over these GTCD. Subject to evidence to the contrary, a written contract or our written confirmation shall be binding for the content of such agreements.
- 1.5 For the installation and implementation of the Goods on-site, our **General Terms and Conditions of Installation** shall apply in addition.
- 1.6 For the usage of the application software, our **General Software Terms and Conditions** shall apply in addition.
- 1.7 Legally relevant declarations and notifications by the Customer with regard to the contract (e.g. setting of deadlines, notification of defects, withdrawal or reduction) must be made in writing, i.e. in written or text form (e.g. letter, e-mail, fax). Legal formal



requirements and further proof, in particular in the event of doubts about the legitimacy of the person making the declaration, shall remain unaffected.

- 1.8 References to the applicability of legal provisions shall only be of clarifying significance. Therefore, even without such clarification, the legal provisions shall apply unless they are directly amended or expressly excluded in these GTCD.

## **2. Conclusion of Contract**

- 2.1 Our offers are subject to alteration and non-binding. This shall also apply if we have provided the Customer with catalogs, technical documentation (e.g. drawings, plans, evaluations, calculations, references to DIN standards), other product descriptions or documents - also in digital form - to which we reserve property rights and copyrights.
- 2.2 The purchase order for the Goods by the Customer shall be deemed a binding offer of contract. Unless otherwise stated in the order, we shall be entitled to accept this offer of contract within 2 (two) weeks of receipt.
- 2.3 Acceptance can be declared either in writing (e.g. by order confirmation) or by delivery of the Goods to the Customer.

## **3. Scope of Delivery, Assembly, Technical Documentation, supplementary Terms**

- 3.1 The scope of delivery results from our offer. The scope of delivery does not include construction measures (e.g. flooring work, wall and ceiling work, protective measures of the floor), connection to supply and waste pipelines and disposal lines such as connections for water, waste water, supply and discharge of air and compressed air, connection to central supply and disposal networks (e.g. electrical main distributor with fuses and separating disc and even the control cabinet, costs for the integration of the switch cabinet, cable trays between goods and switch cabinet).
- 3.2 In-house transport from the unloading point to the installation site as well as personnel and lifting equipment for unloading are also not included in the scope of delivery.
- 3.3 The technical documentation in German language includes in a simple electronic copy:
  - 3.3.1 Operating instructions, circuit diagram, general drawing of the machine, general drawing of assemblies of the machine as well as a maintenance plan
  - 3.3.2 Brief operating instructions, recommended list of spare and wear parts, a digital data medium with the technical documentation as a file in PDF format.
- 3.4 Upon delivery, we provide the Customer with the technical documentation. This should enable him to install, put into operation and operate the Goods themselves. In the case of delivery of machines (new or used) which are installed and put into operation by us on



site on behalf of the Customer, the technical documentation shall be handed over upon purchase, at the latest, however, immediately after that.

#### **4. Delivery Period and Delay in Delivery**

- 4.1 The delivery period shall be agreed individually or determined by us upon acceptance of the order. If this is not the case, the delivery period for machines and spare parts to be manufactured shall be 6 (six) months and for consumables and spare parts in stock 6 (six) weeks from conclusion of the contract.
- 4.2 If we are unable to meet binding delivery deadlines due to reasons for which we cannot be held responsible (non-availability of the service), we shall inform the Customer correspondingly without delay and at the same time notify the Customer of the estimated new delivery deadline. If the service is also not available within the new delivery period, we shall be entitled to withdraw from the contract in whole or in part; any return service already paid by the Customer shall be immediately refunded. A case of non-availability of the performance in this sense shall be deemed to be, in particular, the failure of our supplier to deliver on time if we have concluded a congruent cover transaction, neither we nor our supplier are at fault or we are not obliged to procurement in the individual case.
- 4.3 The occurrence of a delay in delivery shall be ruled by the legal provisions. In any case, however, a reminder by the Customer is required.
- 4.4 If non-compliance with the delivery periods is due to force majeure or other disruptions for which we are not responsible, e.g. war, terrorist attacks, pandemics, epidemics, import and export restrictions, labor disputes, including those affecting our suppliers, the agreed delivery periods shall be extended by the duration of the hindrance. The rights of the Customer pursuant to Sec. 8 of these GTCD and our statutory rights, in particular in the event of an exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of performance and/or subsequent performance), shall remain unaffected.

#### **5. Delivery, Transfer of Risk, Acceptance, Default of Acceptance**

- 5.1 Delivery shall be EXW Hofheim (Incoterms 2020) if nothing else has been agreed in the individual case.
- 5.2 As far as acceptance has been agreed, this shall be decisive for the transfer of risk. The handover or acceptance is the same if the Customer is in default of acceptance.
- 5.3 If the Customer is in default of acceptance, fails to cooperate or if our delivery is delayed for other reasons for which the Customer is responsible, we shall be entitled to demand compensation for the resulting damage including additional expenses (e.g. storage costs). For this purpose, we shall charge a lump-sum compensation in the amount of.



EUR 25.00 per calendar day, starting with the delivery deadline or with the notification of readiness for shipment of the Goods.

- 5.4 Proof of higher damages and our legal claims (in particular compensation for additional expenses, reasonable compensation, termination) shall remain unaffected; however, the lump sum has to be offset against further monetary claims. The Customer shall be entitled to prove that we have incurred no damage at all or only significantly less damage than the aforementioned lump sum.

## **6. Prices and Terms of Payment**

- 6.1 Unless otherwise agreed in individual cases, our current prices at the time of conclusion of the contract shall apply, namely ex warehouse, plus relevant value added tax.
- 6.2 Unless otherwise agreed in individual cases, the Customer shall bear the transport costs ex warehouse and the costs of any transport insurance requested by the Customer. Any customs duties, fees, taxes and other public duties shall be borne by the Customer.
- 6.3 Unless otherwise agreed in individual cases, the purchase price shall be due and payable after delivery of the Goods within 14 (fourteen) calendar days from the invoice. However, we are entitled at any time, also within the framework of an ongoing business relationship, to make a delivery wholly or partly only against advance payment. We shall declare a corresponding reservation at the latest with the order confirmation.
- 6.4 Upon expiry of the payment deadline mentioned above or agreed upon, the Customer shall be in default. During the period of default, interest shall be charged on the purchase price at the applicable statutory default interest rate. We reserve the right to exercise further damage claims caused by default. Our claim to the commercial maturity interest (Sec. 353 HGB) remains unaffected.
- 6.5 The Customer shall only be entitled to off-set and retention rights insofar as its claim is legally established or undisputed. In the event of defects in the delivery, the Customer's counter-rights shall remain unaffected, in particular in accordance with Clause 8.5 sentence 2 of these GTCD.
- 6.6 If, after conclusion of the contract, it becomes recognizable that our claim to the purchase price is jeopardized by the Customer's inability to perform, we shall be entitled to refuse performance in accordance with the legal provisions and - if necessary after setting a deadline - to withdraw from the contract (§ 321 BGB). In the case of contracts for the manufacture of specific items (individual products), we may declare withdrawal



immediately; the legal provisions on the dispensability of setting a deadline shall remain unaffected.

## **7. Retention of Title**

- 7.1 Until full payment of all our present and future claims arising from the purchase contract and an ongoing business relationship (secured claims), we retain title to the Goods sold.
- 7.2 Goods subject to retention of title may neither be pledged to third parties nor assigned as security before full payment of the secured claims. The Customer must notify us immediately in writing if filing for insolvency proceedings are made or if third parties (e.g. seizures) have access to the Goods belonging to us.
- 7.3 In the event of breach of contract of the Customer, in particular in case of non-payment of the due purchase price, we shall be entitled to withdraw from the contract in accordance with the legal provisions or/and to demand return of the Goods on the basis of the reservation of title. The demand for return does not at the same time include the declaration of withdrawal; we are rather entitled to demand only the return of the Goods and to reserve the right of withdrawal. If the Customer does not pay the purchase price when due, we may only assert such rights if we have previously set the Customer a reasonable deadline for payment without success or if setting such a deadline is dispensable according to the legal provisions.
- 7.4 Until revoked in accordance with Clause 7.4.3 below, the Customer is authorized to resell and/or process the Goods subject to retention of title in the ordinary course of business. In this case, the following provisions shall apply in addition.
- 7.4.1 The retention of title shall extend to the products resulting from the processing, mixing or combining of our Goods at their full value, whereby we shall be deemed to be the manufacturer. If, in the event of processing, mixing or combining with goods of third parties, their right of ownership remains, we shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined goods. Otherwise, the same shall apply to the originated product as to the goods delivered under retention of title.
- 7.4.2 The Customer hereby concedes to us by way of security the claims against third parties arising from the resale of the goods or the product in total or in the amount of our co-ownership share, if any, in accordance with the preceding paragraph. We accept the assignment. The obligations of the Customer stated in Clause 7.2 also apply in respect of the assigned claims.
- 7.4.3 The Customer shall remain authorized to collect the claim in alongside us. We undertake not to collect the claim as long as the Customer meets his payment obligations towards us, there is no deficiency in his ability to pay and we do not



assert the retention of title by exercising a right pursuant to Clause 7.3 If this is the case, however, we may demand the Customer to inform us about the assigned claims and their debtors, provide all information necessary for collection, hand over the relevant documents and inform the debtors (third parties) of the assignment. In addition, in this case we shall be entitled to revoke the Customer's authorization to further sell and process the goods subject to retention of title.

7.4.4 If the realizable value of the securities exceeds our claims by more than 10%, we shall release securities of our choice at Customer's request.

## **8. Customer's Claims for Defects**

The legal provisions shall apply to the Customer's rights in the event of material defects and defects of title (including wrong delivery and short delivery as well as improper assembly or defective assembly instructions), unless otherwise stipulated below. In all cases, the special legal provisions shall remain unaffected in case of final delivery of the unprocessed Goods to a consumer, even if the consumer has furtherly processed them (supplier recourse pursuant to Sec. 478 BGB). Claims from supplier recourse are excluded if the defective Goods have been furtherly processed by the Customer or another entrepreneur, e.g. by incorporating it into another product.

- 8.1 The basis of our liability for defects is in particular the agreement concluded on the quality of the Goods. All product descriptions and manufacturer's specifications which represent a contractual object of the individual contract or which had been publicly announced by us (in particular, in catalogs or on our Internet homepage) at the time of the conclusion of the contract shall be deemed to be an agreement on the quality of the Goods.
- 8.2 Insofar as the quality has not been agreed upon, it is to be judged according to legal regulations whether a defect is shall be given or not (Sec. 434 Abs. 1 S. 2 und 3 BGB). However, we shall not assume any liability for public statements made by the manufacturer or other third parties (e.g. advertising statements) to which the Customer has not drawn our attention as such statements being decisive for his purchase.
- 8.3 Categorically, we shall not be liable for defects of which the Customer is aware at the time of conclusion of the contract or of which it is grossly negligently not aware due to (Sec. 442 BGB). Also, the Customer's claims for defects presuppose that he has fulfilled his legal obligations to inspect and give notice of defects (Secs. 377, 381 of the German Commercial Code – "HGB"). In case of Goods intended for installation or other further processing, an inspection by the Customer must in any case take place immediately before processing. If a defect appears upon delivery, inspection or at any later time, we must be notified thereof in writing without delay. In any case, obvious defects shall be notified to us in writing within 10 (ten) days of delivery and defects not visible upon



inspection shall be notified to us within the same period of time after discovery. If the Customer fails to make the proper inspection and/or notification of defects, our liability regarding the defect not notified in time or not notified properly shall be excluded in accordance with the legal provisions.

- 8.4 If the delivered merchandise is defective, we may initially choose whether to provide subsequent performance by remedying the defect (rectification) or by delivering a defect-free item (replacement). Our right to refuse subsequent performance under the legal provisions shall remain unaffected.
- 8.5 We are entitled to make remedial performance conditional upon the Customer paying the purchase price due. However, the Customer shall be entitled to retain a part of the purchase price adequate in relation to the defect.
- 8.6 The Customer shall give us the time and opportunity required for the subsequent performance owed, in particular to hand over the Goods complained about for inspection purposes. In the event of a replacement delivery, the Customer shall return the defective item to us in accordance with the legal provisions. Supplementary performance shall neither include the removal of the defective item nor its re-installation if we had not originally been obliged to install the item.
- 8.7 We shall bear or reimburse the expenses required for the purpose of inspection and subsequent performance, in particular transport, travel, labor and material costs and, if applicable, removal and installation costs, in accordance with the legal provisions if a defect is actually present. Otherwise, we may demand from the Customer reimbursement of the costs incurred as a result of the unjustified request to remedy the defect (in particular inspection and transport costs), unless the lack of defectiveness was not recognisable to the Customer.
- 8.8 If the supplementary performance has failed or a reasonable deadline to be set by the Customer for the supplementary performance has expired unsuccessfully or is dispensable according to the legal provisions, the Customer may withdraw from the purchase contract or reduce the purchase price. In case of an insignificant defect, however, there is no right of withdrawal.
- 8.9 Claims of the Customer for damages or reimbursement of futile expenses shall also in the case of defects only exist in accordance with Clause 10 and shall otherwise be excluded.

## **9. Remote Access**

- 9.1 We can also provide the diagnosis and rectification of faults via telephone, e-mail, remote access to the Goods (machine) ("**Remote Access**") or by using the Internet. We shall



make the decision on on-site interventions. The customer shall support us in the performance of the service to a reasonable extent.

- 9.2 If the Goods (machine) offer functions that allow remote diagnosis and fix the machine problems, we may require Internet access to the goods (machine) support the process of troubleshooting under warranty. We are obliged to perform the process of troubleshooting only in cooperation with the customer
- 9.3 To the extent necessary to provide subsequent performance, the customer accepts the following:
  - 9.3.1 Data retrieved from or transmitted to the Customer's machine by us via the Customer's network or automatic electronic transmission
  - 9.3.2 Data submitted by the Customer may include machine registration, meter readings, utilization rate, machine configuration and settings, software version, and problem/error code.
  - 9.3.3 Data shall be transmitted to a secure off-site location in a secure manner.
  - 9.3.4 Through the Access Facility we read, view, or download the Customer's documents that are on or pass through the machine or the Customer's information management systems
  - 9.3.5 We will not retrieve work-related data unless it is needed to solve a problem, and if it is needed, it is only with the Customer's consent
  - 9.3.6 The Customer cooperates with us and helps maintain remote access to data without costs arising for us.
- 9.4 If troubleshooting via remote access results unsuccessful, customer service will be performed on Goods to resolve the problem on site. However, if the customer does not cooperate with us or our vicarious agents in the provision of subsequent performance, services by remote access and the problem could have been solved by remote access, we reserve the right to charge the customer for the then-current costs of on-site customer service requested by the customer to rectify the problem.

## **10. Liability**

- 10.1 Unless otherwise agreed in individual cases and unless otherwise provided for in these GTCD including the following provisions, we shall be liable for breach of contractual and non-contractual obligations in accordance with the legal provisions.
- 10.2 We shall assume liability for damages - irrespective of legal grounds - within the scope of fault liability in the event of intent and gross negligence. In the case of simple



negligence, we shall only be liable, subject to legal limitations of liability (e.g. care in own affairs; insignificant breach of duty)

10.2.1 for damages resulting from injuries to life, body or health,

10.2.2 for damages resulting from the breach of an essential contractual obligation (the obligation, fulfillment of which enables the proper execution of the contract in the first place and on the compliance with which the contractual partner regularly relies and may rely); in this case, however, our liability shall be limited to the compensation of the foreseeable, typically occurring damage.

The limitations of liability resulting from Clause 10.2 shall also apply to third parties as well as to breaches of duty by persons (also in their favor) for whose fault we are responsible according to legal provisions. They shall not apply as far as a defect was maliciously concealed or a guarantee for the quality of the Goods was assumed, as well as for claims of the Customer under the German Product Liability Act.

10.3 The Customer may only withdraw from or terminate the contract due to a breach of duty that does not consist of a defect if we are responsible for the breach of duty. A free right of termination of the Customer (in particular according to Secs. 650, 648 BGB) is excluded. In all other respects, the legal requirements and legal consequences shall apply.

## **11. Limitation of Liability**

11.1 Notwithstanding Sec. 438 (1) No. 3 of the German Civil Code (BGB), the limitation period for claims arising out of material defects and defects of title shall be one year after delivery. Insofar as acceptance has been agreed, the limitation period shall commence upon acceptance but not later than 18 months after delivery. The limitation period shall also commence upon default of acceptance by the Customer.

11.2 The above limitation periods of the law on sales shall also apply to contractual and non-contractual claims for damages of the Customer based on a defect of the Goods, unless the application of the regular legal limitation period (Secs. 195, 199 BGB) would lead to a shorter limitation period in individual cases. Claims for damages of the Customer according to clause 10.2 sentence 1 and clause 10.2.1 as well as according to the



German Product Liability Act shall become time-barred exclusively according to the legal limitation periods.

## **12. Applicable Law and Place of Jurisdiction**

- 12.1 These GTCD and the contractual relationship between us and the Customer shall be governed by the laws of the Federal Republic of Germany, under exclusion of international uniform law, in particular the UN Sales Law.
- 12.2 The exclusive place of jurisdiction for all disputes arising directly or indirectly out of the contractual relationship shall be our registered office in Hofheim, Germany. However, we shall also be entitled in all cases to bring an action at the place of performance of the delivery obligation in accordance with these GTCD or a prior individual agreement or at the general place of jurisdiction of the Customer. Overriding legal provisions, in particular regarding exclusive competent jurisdiction, shall remain unaffected.