

General Terms and Conditions of Sale and Contracts of maschinenTeam

§ 1 General – Scope of Applicability

The following terms and conditions apply exclusively to all supplies and services of our company. We do not acknowledge our contractual partners' contradictory terms and conditions, unless we have explicitly agreed to their applicability in writing. Our contractual general terms and conditions also apply even if we complete delivery to the customer without reservation, despite being aware that the customer has conditions contradictory to or deviating from our contractual terms and conditions.

§ 2 Offer and Order

Our offers are always non-binding and subject to change. We reserve the right to prior sale, insofar as we have not reserved the object in writing for the recipient of the offer for a limited period.

All orders require our written confirmation to be effective. A revocation of orders after their receipt by us is excluded.

The details on weights and measures, properties, type description and years of manufacture contained in our printed items, offers, etc. are made to the best of our knowledge and belief and are non-binding. In any case, we are not bound by any errors in print, writing and calculations and on the phone. The scope of supply encompasses only those items that are expressly listed in our order confirmation or contract.

Amendments, verbal changes, ancillary agreements and any assurances given on completion of the sale require our written confirmation to be effective.

§ 3 Supplier or Customer Protection

Each prospect assures us of supplier or customer protection, insofar as we verify or offer him, she or it under his, her or its own name an object for buying or selling and in addition notification of the actual location. He, she or it undertakes not to carry out, directly or indirectly or through a third party, price or final negotiations on all objects for sale or purchase at this location without our separate, written agreement, but rather exclusively through us. Orders, sales transactions and supplies arising from such business ties also apply as being negotiated by us and are subject to these preconditions. Our information on machines, locations and prospective buyers are only intended for the recipient and may not be passed on to a third party without our written consent. We can claim damages for contraventions of the abovementioned provisions.

§ 4 Prices

The prices are in EURO and in each case ex-works, ex place of delivery or ex warehouse. They do not include freight, customs duty, carriage, packaging, insurance and other costs. The applicable Value Added Tax is also not included in our prices; it will be invoiced, separately identified, at the rate applicable on the day of invoicing. Decisive for the computation of brand-new machines is the price applicable on the day of delivery.

Free loading onto trucks is included only in respect of delivery ex warehouse, unless something else has been agreed.

§ 5 Shipment and Transfer of Risk

The customer undertakes to accept the delivered goods. In the absence of a deviating agreement (delivery by us), delivery takes place in 95447 Bayreuth. Shipment always takes place at the expense and risk of the recipient or customer, even if carriage paid delivery is agreed. The risk is always transferred to the customer as soon as we have delivered the item to the freight forwarder, the haulage contractor or another person charged with the execution of the shipment; the loading procedure at the place of delivery is part of the shipment.

We are not liable for damage in transit, even if caused by the kind of packing or fixings on the means of transportation. The customer has the right to check the packing and/or fixings or to carry it out himself, herself or itself prior to shipment of the goods. A goods-in-transit insurance policy is taken out only on the express request and cost of the customer.

The customer has the obligation to accept the item for delivery within a period of one week, unless he, she or it is temporarily prevented from effecting acceptance without being to blame for this. If the customer continues to - deliberately or grossly negligently - delay acceptance of the sales object for more than fourteen days from receipt of the notification of readiness for delivery, we are entitled, after setting a further time limit of seven days, to withdraw from the contract or to demand damages due to non-performance. The setting of an extension is not required, if the customer seriously and definitively refuses acceptance or is obviously not in a position to pay the purchase price, also within this period. If the customer declares that he, she or it will not accept the item for delivery, the risk of incidental loss or deterioration of the item for delivery passes over to the customer at the time of the refusal.

§ 6 Delivery Period (Definition of the Beginning of the Delivery Period, Prerequisites for an Extension)

1. All information on delivery periods is given according to our best judgement; however, they are not binding, if we do not guarantee a delivery date in writing in the order confirmation. The delivery period commences with the despatch of the order confirmation; however, not before the provision of any documents, approvals, clearances and materials to be furnished if necessary by the customer as well as the receipt of an agreed deposit.
2. The delivery period is adhered to if, at its expiry, the readiness to ship has been notified or the item for delivery has left the factory.
3. The delivery period is extended in respect of measures in the context of industrial disputes, in particular strikes and lockouts as well as the occurrence of unforeseen obstacles, which are beyond our control, e.g. operational disruptions, delays in the supply of important materials, and such obstacles which have a provably serious impact on the delivery of the item for delivery. This also applies if the circumstances occur at subcontractors and suppliers. The delivery period shall be correspondingly extended by the duration of such measures and obstacles.

We shall also not be held responsible for the abovementioned circumstances even if they occur during an already existing delay. In important cases, the customer shall be informed by us as soon as possible of the beginning and end of such obstacles.

4. Part deliveries are permissible within the delivery periods specified by us, as long as this does not negatively affect the use of the items in question.
5. Adherence to our delivery obligation also presupposes the punctual and correct fulfilment of the customer's obligations. The objection of a non-fulfilled contract remains reserved.
6. If the purchaser delays acceptance or culpably infringes other duties of cooperation we shall be entitled to demand compensation for any losses incurred, including any additional expense. Further claims remain reserved.
7. If the prerequisites of Number 6 are present, the risk of incidental loss or deterioration of the item for delivery shall pass to the customer at the time that he, she or it is in default of acceptance or payment.
8. We shall be liable under the statutory provisions, if the underlying contract of purchase or service is a transaction at a fixed date as defined by Article 286 para. 2 no. 4 BGB (German Civil Code) or Article 376 HGB (German Commercial Code). We shall also liable under the statutory provisions, if, as a consequence of any delay in delivery for which we are responsible, the customer is entitled to assert the right that his, her or its interest in the continued fulfilment of the contract has ended.
9. In addition, we shall be liable under the statutory provisions, if the delivery delay is founded on an intentional or grossly negligent contractual violation on our part; the culpability of our representative or vicarious agent is to be attributed to us. If the delay in delivery is not due to a deliberate breach of contract for which we are accountable, our liability for losses shall be limited to the foreseeable loss, such as is typically to be expected.
10. We shall also liable under the statutory provisions, insofar as the delay in delivery that was due to us was caused by the culpable breach of a material contractual obligation; in this case, however, our liability for damages shall be limited to the foreseeable loss, such as is typically to be expected.
11. Apart from that, we shall be liable in the case of a delay in delivery in the context of a flat-rate compensation for delay of 3% of the value of the delivery for each full week of delay; however, to a maximum of a total of no more than 15% of the value of the delivery.
12. Other statutory claims and rights of the customer are reserved.

§ 7 Terms and Conditions of Payment

1. The purchase or services price and remuneration for ancillary services are due for payment at handover of the item for delivery, insofar as nothing else has been agreed in the order confirmation.
2. Discounts or bonuses are granted only if agreed in writing with the customer at the conclusion of the contract.
3. The customer shall be in default, without any further statement from us, 30 days after the due date, unless he, she or it has paid.
4. Rights of set-off are due to the customer only if his, her or its counter claims are final and conclusive, undisputed or accepted by us. Moreover, he, she or it is authorised to exercise his, her or its right of retention insofar as his, her or its counterclaim is based on the same contractual relationship.
5. In the event of defects, the customer shall have no right of retention inasmuch as this is not in reasonable relationship to the defect and the anticipated costs for subsequent performance (in particular, rectifying a defect).
6. We are not obliged to accept cheques and bills of exchange. Cheques and bills of exchange shall be considered as payment only when redeemed, so that the agreed retention of title and other rights of retention remain to our benefit at least up to the redemption of the bill of exchange. The acceptance of bills of exchange shall always require our prior written agreement. In the case of acceptance of bills of exchange, the bank discount and collection expenses shall be charged. They are to be paid for immediately in cash. In respect of payment in foreign currency, the payment obligation is regarded as being fulfilled only when we have received, for our free disposal, the full EURO price of our invoice.
7. We charge default interest of 8 percentage points p.a. above the relevant base rate pursuant to Article 247 BGB in respect of commercial transactions.
8. Non-adherence to the agreed terms of payment or uncertainties about payment arising after the conclusion of the contract or of which we become aware shall entitle us to cancel without notice any deferrals granted, to suspend the further fulfilment of the contract or the execution of any existing orders until fulfilment of the terms and conditions or to rescind the contract.

§ 8 Retention of Title

The delivery is made only under retention of title. Until then, the buyer may not transfer our proprietorship to a third party without our prior written agreement.

Notwithstanding the existence of the prohibition against further disposal regulated here, claims against the purchaser shall be transferred to us. However, should a third party make any claims on the goods delivered by us or seize these, we are to be notified immediately to safeguard our rights. The consequences of ignoring these provisions shall be borne by the buyer; equally, the costs incurred in our pursuing our claims.

Should machines, accessories, etc. be bonded with the land, parts of buildings or in some other manner with other objects as a result of the construction of foundations or similar measures, it shall be deemed to have been agreed that this bonding is only provisional and may not become permanent until the buyer acquires title after having fulfilled his, her or its obligations.

During the period of retention of title, the customer shall be liable to keep the item of sale in good condition and to have any necessary repairs carried out. He, she or it must insure the item of sales against fire, water, theft and burglary, with the proviso that the supplier is entitled to the rights under the insurance. If, at the request of the supplier, insurance is not proven, it is entitled to insure the item of sale at the expense of the customer.

If the purchaser intends a resale, our prior agreement is necessary for this. In the event of non-observance of this consent, the overall maturity of our accounts receivable shall arise in every case. Moreover, the purchaser shall be liable fully for damages.

Article 455 BGB applies to this retention of title. In the case of open invoices the title retained shall act as a security for all our unpaid claims against the customer.

If the customer is a merchant, he, she or it may dispose of the item of sale. However, he, she or it now hereby assigns to the supplier, until full payment of all his, her or its accounts receivable arising against his, her or its recipients resulting from disposal, including all ancillary rights. At the request of the supplier, the purchaser is obliged to make the assignment known to the new purchaser.

Our retention of title is conditional in such a way that when all our accounts receivables have been fully paid, ownership in the reserved goods automatically passes to the buyer and the buyer is entitled to the assigned receivables. At our discretion, we shall release the securities to which we are entitled to the buyer, if the value exceeds the value of all receivables to be secured by 25 %.

§ 9 a Responsibility for Defects in Respect of New Machines/Other Goods

1. Claims for defects by the customer presuppose that the latter has duly complied with his, her or its obligations to inspect and give notice of defects pursuant to Article 377 of the German Commercial Code. The customer is obliged to inspect the goods without delay at delivery and to immediately notify the haulier of obvious damage; further defects in the delivery must be notified to us in writing without delay.
2. If the item of sale has a defect, the customer can demand at his, her or its discretion either subsequent performance in the form of rectification of the defect or delivery of a new, defect-free item; however, he, she or it is not entitled to rectify the defect himself, herself or itself or to have the defect remedied at our expense, without our knowledge and without previously requesting supplementary performance from us with the setting of a deadline.
3. In the case of rectifying a defect, we are obliged to bear the expense of all expenditure necessary for the purpose of rectifying the defect, in particular, transportation, travel, work and material costs, inasmuch as these as these are not increased by the fact that the item of sale is transferred to a place other than the place of performance. If the supplementary performance fails, the customer is entitled at his, her or its discretion to either cancel the contract or demand a reduction in price.
4. We shall be liable in accordance with statutory provisions insofar as the customer asserts claims for compensation which are based on intent or gross negligence on our part, including any wilful or gross negligence of our representatives or vicarious agents; in this case, our liability for compensation is limited to the foreseeable, typically occurring losses.
5. We shall be liable in accordance with statutory provisions insofar as we culpably violate an important contractual obligation; in this case, our liability is restricted to the foreseeable, typically occurring losses.
6. If the customer is entitled to compensation for losses instead of performance, our liability shall also be restricted as in section (3) to compensation for the foreseeable, typically occurring losses.
7. Liability for culpable injury to life and limb or health remains unaffected; this shall also apply to mandatory liability pursuant to the Product Liability Act.
8. Liability is excluded except where regulated otherwise above.
9. The period of limitation for claims for defects shall be 12 months calculated from the transfer of risk.

§ 9 b Responsibility for Defects in Respect of Used Machines/Other Goods

1. In this respect, the above regulations on § 9 a / No. 1 – the requirement to give notice of defects – and Nos. 4-9 of these contractual terms and conditions – Regulations on Compensation and Exclusion of Liability – apply correspondingly.
2. We sell used and new second-hand machines only in the condition in which you find them and with the existing accessories. The objects are regarded as accepted and approved with viewing, collection and loading. The buyer has the right to view or inspect the goods prior to concluding the contract. If this right is not utilised, the buyer accepts the conditions of the goods as sight unseen.
3. For warranties in respect of freedom from cracks and fractures, this guarantee applies only to such defects that exclude the operability of the machine. Machines repaired by welding or in the so-called crossbar process ("Riegel" process) are regarded as free from cracks and fractures.
4. There is no liability corresponding to § 9a Nos. 2 +3 of these contractual terms and conditions for visible and hidden defects in respect of the supply of used machines. Claims to supplementary performance, a reduction in the sale price or cancellation of the contract of sale are excluded in respect of the supply of used machines.

§ 10 Works Services, in Particular Assembly and Disassembly Services and Commissioning

We guarantee the proper execution of the services undertaken according to the accepted rules of technology. We guarantee any defects, to the exclusion of further claims, as follows:

1. Obvious defects shall be notified in writing without undue delay, at the latest within 8 days after receipt; however, in any case, before commissioning or further processing which incur costs or further use. If a defect is recognized later, this must be notified without delay after it has been discovered. We shall rectify any defects whose cause was already present at the time of the transfer of risk at no charge according to our own choice by the rectification of defects or replacement delivery. If subsequent performance fails, then the customer may demand cancellation of the contract (redhibition) or a decrease in the payment (reduction).
2. If improper modifications or repairs are carried out by the customer or third parties, no claims because of defects or deficiencies may be asserted for these or for the effects thereof. The customer, after communication with us, must grant sufficient time and opportunity to undertake the rectifications. Otherwise we shall be released from the liability for the defect.
3. Claims on the part of the customer for necessary costs for the purposes of supplementary performance, in particular, transportation, travel, work and material costs, are excluded, if costs are increased because the item for delivery is subsequently taken to a location other than the customer's place of business, unless said transfer complies with normal use. The customer shall bear the costs of any relevant additional costs incurred by us.
4. Warranty claims become statute-barred 12 months from acceptance of the relevant works production, at the latest, however, after commissioning of the machine involved. This does not apply to the extent that the law under Article 634a, para. 1, no. 2 BGB prescribes longer periods, and in cases of the injury to life, body or health, upon intentional or grossly negligent violation of an obligation by us or for a misrepresentation of a defect by silence. The statutory provisions on the suspension, interruption and recommencement of the period remain unaffected.
5. We also assume liability within the statutory period of limitation in accordance with the regulations of this § 10 for defective rectification work or defective replacement delivery.
6. In cases of notification of defects, the customer shall have the right to withhold payments commensurate with the defects which have been discovered. The customer may only withhold payments, if there can be no doubt that the notice of defects given is justified. If a defect complaint is not justified, we have the right to demand compensation from the customer for costs we have incurred.
7. Apart from this, § 8a Numbers 4-8 of these contractual terms and conditions apply correspondingly to claims for damages.

§ 11 Rescinding the Contract

If we utilise the right to rescind the contract, the buyer must reimburse us for all expenses incurred as a result of the contract, in particular including those costs incurred through taking apart and return transportation of the machine as well as damage to it caused by the customer or his, her or its people. If nothing different is agreed, the machines are to be delivered to us carriage-free at our warehouse in an unchanged condition.

Even so, we are entitled to demand compensation for the depreciation and use of the machines and the other items and, if need be, to offset the payments made by the customer against our claims.

§ 12 Liability

Any additional liability for damages affecting us beyond that provided for in these general contractual terms and conditions is - irrespective of the legal nature of the claim made – excluded. This applies in particular to claims for compensation arising from negligence in concluding the contract, breach of other contractual obligations and prohibited behaviour or because of tort claims to compensation for property damage in accordance with § 823 BGB.

If claims for damages against us are excluded or limited, this shall also apply with respect to the personal liability for damages of our employees, workers, collaborators, representatives, and vicarious agents.

§ 13 Place of Performance, Place of Jurisdiction and Applicable Law

The place of performance and the place of jurisdiction for payment and delivery for both sides is Bayreuth; however, we are entitled to sue the customer at his, her or its general place of jurisdiction.

The laws of the Federal Republic of Germany shall apply; the application of the UN Convention on the International Sales of Goods is excluded.

§ 14 Severability Clause

The above provisions form an important part of the contracts concluded with us. The contract continues to be valid even if individual provisions of these general contractual terms and conditions are invalid.

As of: 15. September 2019