

# General Terms and Conditions

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## I. Scope of applicability

1. The following terms and conditions of sale are applicable to all contracts for the delivery of goods concluded between the customer and us. By placing an order and receiving the goods supplied by us, the customer confirms his acceptance of our terms and conditions. These terms and conditions shall also be applicable to all future business transactions, even if they are not expressly agreed again. Deviating terms and conditions of the customer are not binding for us unless expressly recognized, even if we have not expressly rejected such terms and conditions. The deviating terms and conditions are already here with expressly rejected. The following terms and conditions of sale shall also be applicable where we unconditionally perform an order from the customer despite our knowledge of opposing or deviating terms and conditions of the customer.
2. Other agreements, amendments and understandings require written confirmation.
3. All agreements reached between the customer and us with regard to performance of the purchase contracts are drawn up in writing in those contracts..

## II. Offers and conclusion of contracts

1. An order from the customer is deemed an offer to conclude a purchase contract. We may accept this offer by communicating a confirmation of offer within a period of two weeks or else by delivering the ordered goods within the same period.
2. Our offers are non-binding and subject to change, except where they are expressly described as binding. The scope of our obligation to perform is determined solely by our written confirmation of order.
3. The documents forming the basis for an offer or confirmation of order on our part, such as illustrations, drawings and specifications of dimensions and weights, are to be understood as approximate values only, in so far as they have not been described expressly as binding.
4. We reserve all property rights, copyrights and other protected privileges in respect of all illustrations, calculations, drawings and other documents, materials, models, specimens and specifications. The customer may only pass these on to third parties with our written consent, irrespective of whether they are marked as being confidential.
5. Evident errors or printing, arithmetic, spelling or calculation mistakes are not binding for us and do not found an entitlement for the customer to claim damages.
6. We reserve the right to implement design changes or other modifications to technical data and performance parameters where this is deemed to serve technical progress.

## III. Pricing and terms of payment.

1. Our prices are applicable ex works excluding packaging, unless specified otherwise in the confirmation of order. Our prices do not include value added tax. Where applicable, this will be specified separately on the invoice at the statutory rate applicable on the date of invoicing. The costs for packaging will be charged at our discretion.
2. Deliveries are performed exclusively on the basis of cash on delivery or advance payment in the currency "EURO".
3. All orders are performed on the basis of the prices and discount rates applicable at the time of delivery. A discount for cash payment may only be deducted in case of a specific written agreement between us and the customer. This written agreement may also be deemed concluded, for example, by way of our confirmation of order.
4. Deliveries on account must be expressly agreed. The purchase price is then due for payment net (without deductions) immediately upon receipt of the invoice by the customer, in so far as no other period for payment is stipulated in the confirmation of order. A payment is only deemed effected once we are able to dispose of the amount. In case of payments by cheque, the payment is only deemed effected after the cheque has been

submitted and credited to our account. We are not obliged to accept bills or drafts.

5. If the customer falls into arrears with payment, then the statutory rules shall apply.

6. All claims against the customer on our part become due for payment immediately, if a deadline for payment is not observed or the customer violates other contractual agreements or we gain knowledge of circumstances which may be expected to reduce the creditworthiness of the customer. In such a case, we are furthermore entitled to perform any outstanding deliveries only against advance payment or the furnishing of security, even if other agreements were reached previously. Following expiry of a reasonable period of grace, we are in this case also entitled to withdraw from the contract or to demand compensation for non-performance. We may furthermore prohibit the resale of goods supplied subject to a reservation of ownership, demand their return or transfer of immediate possession at the expense of the customer, and cancel an authorization to collect.

7. The customer is only entitled to offset payments if the counterclaims are non-appeal-able, recognized by us or undisputed, even if notifications of defects or counterclaims are pending. The customer is only entitled to exercise a right of retention if his counterclaim is based on the same contractual relationship.

#### **IV. Period for delivery or performance**

Delivery dates and deadlines are exclusively non-binding indications, unless expressly agreed as binding. The delivery period specified by us begins only after clarification of all technical questions and details of performance.

2. The customer must fulfill the obligations resting upon him properly and in good time. The agreed delivery deadline is extended – not with-standing our rights arising from the customer's default – by the period by which the customer is in default with his obligations from the present or any other contract. This applies also where a fixed delivery date was agreed.

3. If the underlying transaction of the purchase contract is a fixed-date transaction in the sense of § 286 para. 2 no.

4 BGB (German Civil Code) or § 376 HGB (German Commercial Code), then we are liable in accordance with the statutory regulations. The same applies also where the customer is entitled to assert the frustration of his interest in further performance of the contract due to a delay in delivery attributable to us. In this case, our liability is limited to the amount of the foreseeable, typically arising damage. The limitation of liability is not applicable where the delay in delivery is due to a deliberate violation of the contract attributable to us, for which purposes such fault on the part of our representatives or agents is deemed attributable to us. We are similarly liable towards the customer in accordance with the statutory regulations in case of a delay in delivery arising from a deliberate or grossly negligent violation of the contract attributable to us, for which purposes such fault on the part of our representatives or agents is deemed attributable to us. Our liability is limited to the amount of the foreseeable, typically arising damage if the delay in delivery is not due to deliberate violation of the contract attributable to us.

4. In a case in which a delay in delivery attributable to us arises from culpable violation of an essential contractual duty, for which purposes such fault on the part of our representatives or agents is deemed attributable to us, we are liable in accordance with the statutory regulations with the proviso that the liability for compensatory damages is in this case limited to the amount of the foreseeable, typically arising damage.

5. The customer is in case of a delay in delivery attributable to us otherwise entitled to demand flat rate compensation amounting to 0.5% of the delivery value for each full week of the delay, but in total no more than 5% of the delivery value.

6. All further liability for a delay in delivery attributable to us is excluded. Further statutory claims and rights on the part of the customer which may be available to him alongside the claim for compensatory damages due to a delay in delivery attributable to us remain unaffected.

7. We are entitled to effect partial delivery or partial performance at anytime, insofar as this is reasonable for the customer.

8. Delivery deadlines are deemed to have been observed if the

goods leave our premises in good time.

9. Cases of force majeure entitle us to delay the delivery for the period of the hindrance and a reasonable response time or else to withdraw from the portion of the contract which has not yet been performed. Strikes, lock-outs and other circumstances which significantly impair or otherwise render our delivery impossible are deemed equivalent to force majeure, irrespective of whether they affect us directly or a supplier. The customer is entitled to demand a statement from us as to whether we intend to withdraw or deliver within a reasonable period. If we make no such statement, then the customer is entitled to withdraw.

10. If the customer falls into default with his acceptance of our delivery, then we are entitled to demand reimbursement of the damage incurred and any additional expense. The same applies also where the customer culpably violates duties to cooperate.

The risks of deterioration and accidental loss pass to the customer with his default in accepting or debtor's delay.

#### **V. Transfer of risk – Dispatch and packaging – Delivery**

1. Goods are dispatched and delivered insured at the customer's risk and expense, unless we have been prohibited accordingly by the customer. We will make every effort to take into account the wishes and interests of the customer when choosing the form of dispatch and forwarding route; any ensuing additional costs are to be paid by the customer, even if carriage-paid delivery was otherwise agreed. All liability is excluded in respect of the choice of transport means and forwarding route.

2. All risk passes to the customer upon handing-over to the forwarder, carrier or the customer himself as collector, but at the latest upon the goods leaving the works or warehouse.

3. In case of deliveries with erection or assembly at the customer's site, risk passes upon taking-over for own operations or, if agreed, after successful test operation. If the dispatch, delivery, start or performance of erection or assembly, taking over for own operations or test operation is delayed for reasons attributable to the customer, or of the customer falls into default of acceptance for any other reasons, then risk already passes to the customer with the corresponding readiness.

4. We do not take back transport packaging or any other packaging in accordance with the directive on packaging, with the exception of pallets. The customer must provide for disposal of the packaging at his own expense.

5. If dispatch is delayed at the wishes or through the fault of the customer, then we take the goods into storage at the customer's risk and expense. In this case, the notification of readiness for dispatch is deemed equivalent to actual dispatch.

6. The minimum order amount for deliveries to be dispatched is 50 EURO (excluding VAT) for inland sales or 500 EURO for foreign sales. Inland orders below the minimum order value will be delivered subject to invoicing of an extra handling charge of 50 EURO (excluding VAT), in addition to the usual costs for packaging and dispatch. Foreign orders below the minimum order value will not be accepted for delivery.

7. Orders for custom products or for quantities and dimensions which are not specified in our catalog must be submitted in written form by the customer. Where appropriate, an agreed advance payment must be made. If we accept orders for custom products in large quantities, the nor delivery may exceed or fall short of the specified quantity by a reasonable amount (generally  $\pm 10\%$ ). Dispatch packaging is always charged at cost price.

#### **VI. Warranty / liability**

1. In contractual relations with registered traders and between companies we give a warranty of freedom from defects for our products for a period of one year.

2. For milling spindles and other wearing parts we give a warranty of freedom from defects for a period of 6 months. This warranty period of 6 months applies also to milling spindles which are integrated into a machine system.

3. Advice on applications is provided according to the best of our knowledge. All specifications and information with regard to the suitability and applicability of our goods, however, remain non-binding and do not release the customer from the requirement to perform his own calculations, tests and trials. The

customer is himself responsible for compliance with statutory and authority regulations concerning use of the goods. We are liable for the suitability of the goods for a particular purpose only if this suitability has been expressly warranted in writing.

4. We provide a warranty for material defects as follows, to the exclusion of all further claims and subject to the following stipulations and the stipulations of Sections VIII and IX:

5. If the customer is a registered trader, he can assert claims for defects only if he has complied properly with his duties of inspection and notification of complaint in accordance with § 377 HGB. Other customers must submit their notice of complaint to us in writing within 10 days after receiving the goods. In the case of transactions with non-traders this applies only insofar as the defect is an evident defect. Notices of complaint can only be considered if the goods are still in the state in which they were delivered.

6. In case of justified notifications of defect we are entitled, to the exclusion of rights on the part of the customer, to withdraw from the contract or to reduce the purchase price or else obliged to rectify our performance, unless we are entitled to refuse rectifying performance on the basis of statutory regulations. The customer must grant us a reasonable period for rectifying performance. The rectifying performance may be effected by way of remedying of the defect (reworking) or replacement delivery at our own discretion. We bear the necessary expenses in case of remedying of the defect, insofar as the expenses are not increased due to the goods concerned being at a place other than the place of performance. If the rectifying performance is not successful, the customer may at his own discretion demand a reduction of the purchase price or declare his withdrawal from the contract. Remedying is deemed unsuccessful after the second unsuccessful attempt, insofar as further attempts at remedy are not justifiable and reasonable for the customer on account of the nature of the goods. The customer may only assert claims for damages due to defect under the following terms after an unsuccessful attempt at rectifying performance. The customer's rights to claim further damages under the following terms remain unaffected.

7. Returns of goods subject of a complaint are permissible only with our consent. Goods must be returned in the original or an equivalent packaging. Carriage costs are to be paid by the customer. Costs will be reimbursed only in case of a justified notification of defect. If the customer demands an inspection of the delivered goods and specifies a defect for which we would be liable, then we charge a handling fee for each inspected item which is shown not to be defective.

8. Warranty claims on the part of the customer expire one year after delivery to the customer, unless we have fraudulently concealed the defect; in this case the statutory regulations shall apply. Our duties arising from Section VI no. 9 and Section VI no. 10 remain unaffected.

9. We are obliged in accordance with the statutory regulations to take back the new goods or else to reduce the purchase price also without the otherwise necessary specification of a deadline if the customer's customer as end user of the new movable sold (consumer goods sales) is able to demand return of the goods or reduction of the purchase price from the customer due to the defect in the goods or if such a resulting claim under a right of recourse has been expressed against the customer. We are in this case furthermore obliged to reimburse the expenses, in particular transport, travel, labor and material costs, incurred by the customer in conjunction with his rectifying performance for the end user due to a defect in the goods present at the passing of risk from us to the customer. This claim is excluded if the customer failed to comply properly with his duties of inspection and notification of complaint in accordance with § 377 HGB.

10. The obligation under Section VI no. 9 is excluded insofar as the notice of defect is based on marketing statements or other contractual agreements which did not originate from us, or if the customer has given special guarantees to the end user. The obligation is similarly excluded if the customer himself was not obliged to perform the warranty duties towards the end user under statutory regulations or failed to assert such opposition to the claim made against him. This applies also where the customer has performed warranty duties towards the end user which go beyond the statutory scope.

11. We are liable according to the statutory regulations and

irrespective of the following limitations of liability for injury to life, body or health which is attributable to a negligent or deliberate violation of duties by us, our legal representatives or our agents, as well as for damage which is covered by a liability under the Product Liability Act (Produkthaftungsgesetz). In case of damage which is not covered by sentence 1 above and which is attributable to deliberate or grossly negligent violations of contract or fraudulent actions by us, our legal representatives or our agents, we are liable in accordance with the statutory regulations. In this case, however, the liability for damages is limited to the amount of the foreseeable and typically arising damage, insofar as we, our legal representatives or our agents have not acted deliberately. To the extent to which we have given a warranty of quality or durability in respect of the goods or parts thereof, we are liable also within the framework of this warranty. In case of damage arising from the absence of the warranted quality or durability but not directly in the goods themselves, however, we are liable only where the risk of such damage is evidently covered by the warranty of quality and durability.

12. All further liability is excluded, irrespective of the legal nature of the asserted claim. This applies in particular also to tortious claims or claims for the reimbursement of futile expenses in lieu of performance; our liability in accordance with Section IV no. 6 to Section IV no. 10 of these terms and conditions remains unaffected. Where our liability is excluded or limited, this applies also to the personal liability of our staff, employees, representatives and agents.

13. Claims on the part of the customer for compensatory damages due to a defect expire one year after delivery of the goods. This does not apply in cases of injury to life, body or health for which we, our legal representatives or our agents are to blame, or where we or our legal representatives have acted deliberately or with gross negligence, or where our simple agents have acted with gross negligence.

14. We furthermore accept no liability for damage arising from the following circumstances: Unsuitable or improper use or storage, incorrect assembly by the customer or any third party, own modifications and attempts at repair, natural wear, incorrect or negligent handling, chemical influences, electrical influences, etc. over which we have no control, as well as in case of use for purposes other than those intended or failure to observe our operating instructions and catalog specifications. Our warranty is also waived if the customer or any third party performs modifications without our prior written authorization and without any other justification (delayed rectification of a fault on our part), in particular modifications to controllers/software, even if the fault occurs in a part which was not modified.

15. In case of legal defects, where use of the delivered goods violates industrial property rights or copyright in Germany, we will at our expense obtain a principle right for the customer or else modify the delivered goods in a manner reasonable for the customer and such that the rights are no longer violated. If this is not possible at economically reasonable expense or within a reasonable period, then the customer is entitled to withdraw from the contract. We will furthermore indemnify the customer against any undisputed or non-appeal-able claims.

16. Our above obligation is attendant subject to the above liability stipulations for cases of violation of property rights and copyright. The obligation under clause 15 is thus only effective if the customer informs us without delay of any claims of violation of property rights and copyright, the customer supports us to a reasonable extent in contesting the asserted claims and/or permits us to make corresponding modifications, we retain the right to take all defensive measures, including out-of-court settlements, the violation is not attributable to an instruction of the customer, and the violation is not due to the customer himself modifying the delivered goods or using the goods in a manner not compliant with the contract.

## **VII. Repairs and returns**

1. If the customer wishes a cost estimate to be provided before performance of repairs, then this must be expressly specified.

The costs of carriage and packaging are to be paid by the customer. The invoice amount for repairs is payable immediately without deductions of any kind. All repairs, including those performed as warranty repairs, are performed at our works,

insofar as no other written agreement exists.

2. Returns of delivered goods are possible only after prior consultation and agreement, and are subject to appropriate mark-downs. All returns of custom products and software are excluded! All shipments and returns are to enclose a copy of the delivery note or invoice. The costs of the return shipment are to be paid by the customer. Returns must be delivered free of charge to our address.

#### **VIII. Assembly**

1. Assembly work is to be paid for separately, unless agreed otherwise in writing. The costs of assembly comprise in particular travel costs, daily allowances, the usual daily rates for working time and supplements for overtime, for work at nights or on Sundays and public holidays, for work under aggravated circumstances and for planning and supervision.
2. The costs for preparation, traveling, waiting and site-to-quarters times will be invoiced separately. If the assembly or commissioning is delayed for reasons not attributable to us, then the customer is to bear all costs for the waiting time and for any further travel which becomes necessary.
3. The customer is at his own expense to provide the necessary helpers in appropriate numbers with their required tools. The customer is furthermore to provide sufficiently large, suitable, dry and lockable rooms for the keeping of machine parts, equipment, materials, tools, etc. He is to take the same measures to protect our property and the assembly personnel as he would take to protect his own property. If the nature of the customer's operations requires special protective clothing or protective equipment for the assembly personnel, then he is also to provide this clothing and equipment.
4. Our assembly personnel and their subcontractors are not authorized to perform work which is not performed to fulfill our obligation to deliver and erect or assemble the goods nor to have such work performed by the customer or a third party without prior consultation with us. We are not liable for such work which is not attributable to our sphere of responsibility. If the assembly is performed by the customer or a third party commissioned to do so by him, then our correspondingly valid operating and assembly instructions are to be observed.

#### **IV. Software, use of software and supplementary warranty and defect claims**

1. For all software of whatever kind from us, including the corresponding documentation, the customer is in exchange for payment granted a non-exclusive, non-transferable and in terms of time unlimited right of use on a particular or individually specified hardware product. We remain the holders of the copyright and all other industrial property rights. The right of duplication is granted only for the purpose of data backups. Copyright notices must not be removed.
2. We supply installation and start-up instructions with appropriate safety notes for the software in printed form. All other documentation is provided only in the form of software data. When a new software release is sent to the customer, the correspondingly necessary software data will also be sent. We are also entitled to supply the documentation by way of an online help function or online documentation.
3. All communication to third parties requires our prior written consent. Where software is supplied for the purpose of resale, acceptance of this condition by the third party must be ensured. Modifications are not permitted.
4. In case of a violation of these stipulations, the customer is to pay a contractual penalty amounting to 10 times the order value for each violation. Further claims for compensatory damages remain unaffected. The contractual penalty is to be offset from any claims for compensatory damages. The customer is entitled to furnish proof that less or no damage has been incurred. The software and the corresponding documentation are in this case to be returned without delay.
5. The above stipulations are not applicable to exclusively customer-specific software developed on the basis of specifications provided by the customer. Such software developed within the framework of a contractually agreed complete control solution is composed specifically for the customer through the combination of modular software components created for a diversity of application cases (standard software modules) and

is matched to the contractual performance specifications( customer-specific application software).

6. Upon full payment of the purchase price for the customer specific application software, we grant the customer an exclusive and in terms of territory and time unlimited right of use, but without the customer acquiring any rights of any kind in respect of the individual standard software modules on which the customer-specific adaptation is based.

7. Irrespective of these stipulations, we remain entitled to create and offer further customer-specific software solutions on the basis of this development to accommodate the task specifications of other customers. We in any case retain a simple right of use in respect of the customer-specific solutions for our own internal purposes.

8. Subject to the stipulations of Section VI, we provide a warranty for the proper duplication of our software. Software from us will run on hardware products specified by us. Warranty duties are fulfilled by way of replacement delivery. Beyond this, we give no warranty regarding the flawless quality of the software and its data structure, unless agreed otherwise in writing. In the case of customer-specific software, we give a warranty in respect of the function and performance properties defined in the specifications, the confirmation of order, the documentation or the jointly determined work/process descriptions.

We give no warranty regarding the flawless quality of the programs as used in all applications intended by the customer, in particular not in those applications which were not known to us or tested at the time of creation/acceptance.

#### **X. Reservation of ownership**

1. The supplied goods remain our property until all claims have been settled, including all open account balance claims which we hold now or in the future against the customer (reserved goods). In case of behavior contrary to the contract on the part of the customer, e.g. payment arrears, we are entitled to take back the reserved goods after having previously specified a reasonable period of grace. If we take the reserved goods back, then this is deemed to represent withdrawal from the contract. If we seize the reserved goods, then this is deemed to represent withdrawal from the contract. We are entitled to dispose of reserved goods which are taken back. After deduction of a reasonable amount to cover the costs of disposal, the proceeds of disposal are to be offset against the amounts owed to us by the customer.

2. The customer is to handle the reserved goods with due care and is at his own expense to insure them adequately for their original value against fire, water damage and theft. Maintenance and inspection work which becomes necessary is to be performed by the customer in good time and at his own expense.

3. The customer is entitled to resell and/or make use of the reserved goods in the course of proper business, provided he is not in arrears with payments. He is not permitted to pledge the reserved goods nor to assign them as security. Claims arising from reselling or on any other legal basis (insurance, unlawful action) in respect of the reserved goods (including all open account balance claims) are already herewith assigned to us in full by the customer as security; we here with accept this assignment. We authorize the customer revocable to collect the claims assigned to us in his own name for his account. The authorization to collect can be revoked at any time, should the customer fail to properly fulfill his payment obligations. The customer is also not authorized to assign claims for the purpose of collection by way of factoring, unless an obligation is founded at the same time whereby the factor is to effect considerations up to the amount of the claims directly to us as long as we still hold claims against the customer.

4. Any processing or refashioning of the reserved goods by the customer is in all cases deemed to be performed on our behalf. Insofar as the reserved goods are processed with other items not belonging to us, we acquire co-ownership of the new goods according to the ratio between the value of the reserved goods (final invoice amount including VAT) and that of the other processed items at the time of processing. The same stipulations apply to the new goods arising through such processing as to the reserved goods. Where the reserved goods are combined inseparably with other items not belonging to us, we acquire coownership

of the new goods according to the ratio between the value of the reserved goods (final invoice amount including VAT) and that of the other combined items at the time of combining. If the customer's product is to be considered the principal good as a result of the combining, then we and the customer are agreed that the customer is to assign proportional co-ownership of this good to us; we here with accept this assignment. Our resulting sole or co-ownership of a good is to be kept for us by the customer.

5. In case of access to the reserved goods by a third party, in particular in case of seizure, the customer is to draw attention to our ownership and is to inform us without delay so that we are able to assert our ownership rights. If the third party is not in a position to reimburse the judicial and extrajudicial costs incurred by us in this connection, then the customer is to be liable accordingly.

6. We are obliged to release securities assigned to us insofar as the realizable value of our securities exceeds the secured claims by more than 10%; the decision as to which securities are to be released is left to our discretion.

#### **XI. Place of performance, place of jurisdiction and applicable law**

1. The place of performance and jurisdiction in respect of deliveries and payments (including actions pertaining to cheques and bills) as well as for all disputes arising between us and the customer from purchase contracts concluded between us and the customer, if the customer is a registered trader, a legal person under public law or a special trust under public law, or if he has his residence or business offices outside the Federal Republic of Germany, is the court at the place of our business offices in 36132 Eiterfeld, Germany. We are entitled, however, to file action against the customer at the place of his residence or business offices.

2. The relationships between the contract parties are governed solely by the law applicable in the Federal Republic of Germany to the exclusion of all bilateral and multilateral treaties relevant to the transaction; the applicability of UN Law on International Sales, in particular, is excluded.

#### **XII. Miscellaneous**

1. If the customer exports our goods to territories outside the Federal Republic of Germany, then we accept no liability for an ensuing violation of property rights held by third parties. The customer is obliged to provide compensation for all damage arising from the exporting of goods which we did not supply expressly for export.

2. If any of the stipulations of these general terms and conditions of business are shown to be invalid, then this shall not affect the validity of the remaining stipulations. We and the customer are to replace the invalid stipulations with new stipulations which are legally permissible and correspond as closely as possible to the original legal and economic intention and purpose.

3. All changes and amendments to these general terms and conditions of business become effective only if executed in writing. This applies also to an agreement to waive this requirement of the written form.

Date: July 1st 2011