

General Terms of Business and Delivery of Hermann Klünder GmbH

Section 1 Miscellaneous provisions

- (1) These General Terms and Conditions of Business and Delivery apply without exception to entrepreneurs within the meaning of Section 14 BGB [German Civil Code].
- (2) All deliveries, services and offers by the Seller are made or performed solely on the basis of these Terms of Business. They also apply to all future business relations, even when they are not explicitly agreed upon anew. The Terms and Conditions are deemed accepted at the latest when our goods or services are received by the Buyer. Confirmation of acceptance by the Buyer is not required.
- (3) No derogation from these Terms of Business shall be valid unless confirmed in writing by the Seller.
- (4) Offers tendered by the Seller are non-binding. The Seller reserves the right to prior sale. Declarations of acceptance and orders require written confirmation by the Seller to obtain legal effect. The same principle applies to any additions, amendments or side-agreements.
- (5) Drawings, pictures, dimensions, weights and other data in respect of goods and services provided are binding only if that is explicitly agreed upon in writing.

Section 2 Prices

- (1) Unless otherwise stated, the Seller remains committed to the prices quoted in its offers for a period of 30 days as from the date of said offers. The prices applicable to the contract are those quoted in the Seller's confirmation of order, plus the respective amounts of statutory value-added tax, transport charges and packaging charges. Additional deliveries of goods and provision of services are billed separately.
- (2) Unless otherwise agreed, prices are ex works (Incoterms 2010), in Euro, excluding transport and packaging charges.

Section 3 Right of delivery and service provision

- (1) The dates and deadlines specified by the Seller are non-binding unless otherwise and explicitly agreed in writing.
- (2) The Seller bears no responsibility, even in the case of bindingly agreed dates and deadlines, for any delays in delivery or service provision that are due to force majeure or due to events that make it significantly more difficult or, through no fault of our own, which make it impossible for us to deliver – including, but not limited to subsequently arising procurement problems, operational disruptions, strike, lock-out, lack of transport, official directives, etc., also if they occur at suppliers to the Seller or to their subcontracted suppliers. Such delays give the Seller the right to postpone delivery or service provision by the duration of such hindrance, plus a reasonable lead time, or to withdraw from the contract in whole or in part in respect of the part which has not yet been fulfilled.

- (3) If the date of delivery is postponed by the hindrance, the Buyer has the right to withdraw from the contract, in respect of the part which has not yet been fulfilled, if a deadline of at least two months has been set in writing and has expired to no avail.
- (4) If the Seller is responsible for failing to comply with dates and deadlines to which it has bindingly committed itself, or is in default, the Buyer shall be entitled to compensation amounting to 0.5% of the invoice value for each complete week in default, but not more than 5% of the invoice value for the deliveries and services affected by default. No further will be accepted unless default is due to at least gross negligence on the part of the Seller.
- (5) The Seller has the right at all times to make partial deliveries or render partial provision of services.

Section 4 Transfer of risk

Risk passes to the Buyer as soon as the consignment has been handed over to the carrier or has left the Seller's works for dispatch. If dispatch is rendered impossible or is delayed through no fault of the Seller, the risk passes to the Buyer when notification of readiness to dispatch has been given.

Section 5 Warranty

- (1) The Seller guarantees that the products are free of manufacturing defects and defects in material; the warranty period is twelve months. If the passing of risk is delayed beyond the date specified in Section 3 (3) Sentence 3 above, liability shall end no later than twelve months after the passing of risk.
- (2) The warranty period begins on the delivery date. If operating or maintenance instructions provided by the Seller are not complied with, or if, without conferring with the Seller, modifications are made to products, parts are replaced or consumables are used which do not conform to the original specifications, then the warranty is rendered void unless the Buyer proves that the measure taken did not contribute to any defect.
- (3) The Buyer must notify the Seller's Customer Service department of any defect without delay, but no later than one week after the object of delivery is received. Defects that cannot be discovered within that period, despite meticulous checks being performed, must be notified to the Seller by telephone immediately on discovery and confirmed to the Seller in writing.
- (4) If the Buyer gives notification that the products do not comply with what is contractually owed, the Seller has the right to require, at its own discretion, that
 - a) the defective part or device be sent for repair and subsequent return to the Seller;
 - b) the Buyer keep the defective part or device and that a service technician be sent by the Seller to the Buyer to carry out the repairs;
 - c) the repairs be carried out by the Buyer itself, or by a third party, in accordance with explicit instructions from the Seller. The Seller shall the Buyer any essential costs incurred.

Replaced parts are to be sent to the Seller unless the Seller waives this requirement in a written statement to that effect. Spare parts shall be procured in warranty cases from the Seller only.

If the Buyer requires that warranty work be carried out at a specified place other than the place of delivery, the Seller may comply with such a request, with no charge being made for parts that come under the warranty, but with any additional working hours and travel expenses being chargeable at the Seller's standard rates.

- (5) If the Seller fails, within a reasonable period to be set in writing by the Buyer, to remedy a defect of parts which are essential for proper functioning, the Buyer may reduce payment or cancel the contract, at its own discretion.
- (6) No liability for normal wear and tear shall be accepted.
- (7) Only the immediate Buyer is entitled to any warranty claims, and the latter are not assignable.
- (8) The paragraphs above contain the entire warranty for the products and exclude any other warranty claims of whatever kind. (9) The above provisions in this section do not apply to second-hand machinery. The latter are supplied without any warranty whatsoever.

Section 6 Retention of title

- (1) The Seller retains ownership of the goods delivered until all amounts owed by the Buyer to the Seller have been paid. If the Buyer issues a cheque for the invoiced amount and simultaneously receives an acceptance from the Seller for the purchase price (cheque/acceptance procedure), this shall be without prejudice to the above retention of title.
- (2) The Buyer may sell the reserved title goods within the course of ordinary business operations. The Buyer is not permitted to pledge the reserved title goods or to transfer ownership in them as collateral.
- (3) The Buyer processes the Seller's reserved title goods on behalf of the Seller, without any obligations ensuing for the Seller; the Seller is the producer within the meaning of Section 950 BGB.

If the Seller's reserved title goods are processed, mixed or blended with other goods not belonging to the Seller, then the Seller is entitled to a co-ownership share in the new item according to the ratio of the invoice value of the goods supplied by the Seller to the invoice value of the other goods, pursuant to Sections 947, 948 BGB; if the Buyer acquires sole ownership of the new item, the Seller and the Buyer are hereby agreed that the Buyer shall grant the Seller co-ownership of the new item in proportion to the invoice value of the goods supplied by the Seller, and that the Buyer shall keep the new item on behalf of the Seller and free of charge.

- (4) The Buyer hereby assigns to the Seller all receivables from resale of the Seller's reserved title goods; the Seller accepts this assignment. The same applies to receivables in respect of contracts for work and services, in which the reservation of title is cancelled when the goods have been delivered and the work has been performed.

- (5) If goods that the Seller has co-ownership of after they have been processed, mixed or blended are subsequently sold, prior assignment shall include a share in the receivable amounting to the invoice value of the Seller's processed, mixed or blended goods. The same principle shall apply accordingly if the Seller's reserved title goods are resold as a unit in combination with other goods. In the case of contracts for work and services, in which the reservation of title is cancelled when the goods have been delivered and the work has been performed, prior assignment shall include a share in the receivable to the amount of the invoice value.
- (6) The Buyer has the right to collect assigned receivables until such time as the Seller revokes that right.

The right to collect receivables shall lapse, even without explicit revocation by the Seller, if the Buyer fails to honour its obligations towards the Seller or if the Buyer's financial situation deteriorates significantly, in particular if the Buyer discontinues payments or if application is made to open composition or bankruptcy proceedings.

At the request of the Seller, the Buyer shall provide the Seller with the details of assigned receivables as may be required in for collection thereof, to send the respective documents and to notify the debtor of the assignment.

- (7) The Seller has the right to demand surrender of the reserved title goods by the Buyer, without any extension of term and without withdrawing from the contract, if the latter defaults on its obligations towards the Seller. Taking back the reserved title goods does not constitute withdrawal from the contract unless the Seller has expressly stated the same in writing.

If the Seller withdraws from the contract, it may demand a reasonable amount of payment for the duration that use of the goods has been provided.

- (8) If it appears to the Seller that its claims are in jeopardy, the Buyer shall notify its customers of the assignment, at the request of the Seller, and shall give the Seller all the information and documents that may be required. If third parties seize or confiscate the reserved title goods and assigned claims, the Buyer shall inform the Seller thereof without delay.
- (9) If the value of the collateral to which the Seller is entitled exceeds the Seller's secured receivables from the Buyer by more than 20%, the Seller shall release the respective amount of collateral at the request of the Buyer. The Seller may decide at its own discretion which collateral to release.

Section 7 Payment

- (1) Unless otherwise agreed, the invoices issued by the Seller are payable without deductions within 30 days of receipt. The Seller has the right to credit payments against older debts first of all. If costs and interest charges have arisen, the Seller has the right to credit payment against costs first, then against interest and lastly against the main payment that is due.
- (2) Payment is not deemed effected until the Seller can dispose of the amount in question.

If payment is made by cheque or bill, payment is not deemed effected until the cheque or bill has been redeemed.

- (3) If the Buyer fails to honour its obligations to pay, in particular if a cheque is not redeemed or a bill is protested, or if the Seller receives specific indications that the Buyer is not creditworthy or is insolvent, then the Seller has the right to make the entire remaining debt due and payable.
- (4) If there is reasonable cause to doubt the solvency or creditworthiness of the Buyer, and if the Buyer is not willing to pay cash in advance, despite a demand for payment to that effect, or is not willing to provide suitable collateral for the debt it owes, then the Seller has the right to withdraw from the contract if it has not yet supplied the respective goods or performed the respective service.

Section 8 Design changes

- (1) The Seller reserves the right to make design changes at any time; it is under no obligation to make such changes to products that have already been delivered.
- (2) Except in cases of deliberate or grossly negligent action, the Seller will not accept any claims to compensation arising from the impossibility of supplying goods or services, from positive breach of contract, from culpability at conclusion of contract or from actionable tort that may be lodged against the Seller or against its vicarious agents.
- (3) The Seller will not accept any liability, with regard to receipt of payment, in connection with payments made by the Buyer that are not made directly to the GmbH, its managers or to an explicitly authorised person.

Section 10 Severability

Should any provision of these Terms and Conditions, or any provision in other related agreements be or become invalid, this shall have no impact on the validity of the other provisions or agreements. The invalid provision shall be replaced by a valid provision that comes closest to the intentions of the parties when viewed from the commercial perspective.

Section 11 Place of performance and place of jurisdiction

- (1) The place of jurisdiction is Stolzenau.
- (2) If the other party to the contract has full commercial capacity or is a legal entity under public law or a public-law corporation, the place of jurisdiction for all rights and obligations of the two parties to the contract in respect of business transactions of any kind is the domicile of the supplier company.

For export contracts

Compliance with applicable law and export, US-market

- (1) The Buyer shall comply with all legal regulations and official requirements as well as all other applicable laws and in particular export provisions and the laws of the country in which the Buyer will do business. The Buyer shall timely obtain all required authorizations and licenses as well as all other required approvals which are required according to applicable laws for the use and or export of the delivery item.
- (2) The Seller shall have the right to withhold its performance from the Buyer if the Buyer would breach such applicable laws or if all of the required authorizations have not been obtained and it is not due to the fault or responsibility of the Seller.
- (3) The Seller hereby declares that the machines sold under these Terms and Conditions comply with applicable European and German laws and regulations, especially Directive 2006/42 on machinery, the Use of Work Equipment Directive (89/655/EEC) (European Law) and the Product Safety Act (Produktsicherheitsgesetz) (German law).
- (4) Seller does not warrant or guarantee, either by explicit or by implied terms or declarations, that the machines sold under these Terms and Conditions have passed any US requirements, especially OSHA requirements or ANSI standards or any other requirement by US federal, state or local laws and regulations.
- (5) It is the sole responsibility of the Buyer at all times to comply with all applicable US federal, state or local laws and regulations when it imports, operates or sells or otherwise markets the machine.