

# GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY APPLICABLE TO MACHINE TOOLS AND SPECIAL MACHINES OF LANG TUBE TEC GMBH

## 1. Offer and conclusion of contract

1.1 Every offer, quotation or order shall be subject exclusively to the General Terms and Conditions of Sale and Delivery as indicated hereinbelow (hereinafter also referred to as "Terms and Conditions of Sale").

Every offer submitted by the contractor shall be subject to change without notice. No order awarded shall be binding unless after its written confirmation by the contractor.

1.2 The General Terms and Conditions of Sale and Delivery as indicated hereinbelow shall apply on an exclusive basis; no customer terms and conditions conflicting with or differing from these Terms and Conditions of Sale shall be recognized by the contractor unless with the contractor's express and written consent to the validity thereof. These Terms and Conditions of Sale shall be applicable even when the contractor makes any delivery to the customer without reservation while being aware of any customer terms and conditions conflicting with or differing from these Terms and Conditions of Sale.

1.3 The Contractor shall reserve the ownership right and, where copyrightable, the copyright for any illustrated matter, cost estimate, drawing, costing or any other document. The transfer of any such document to any third party by the customer shall be subject to the contractor's express prior consent.

1.4 Any individual agreement made with the customer in a particular case (including any subsidiary agreement, supplement or modification) shall take precedence over these General Terms and Conditions of Sale and Delivery in every case. The contents of any such agreement shall be subject to a written contract or written confirmation issued by the contractor.

1.5 No legally relevant representation or notification (e.g., notice to set deadlines, reminder, notice of rescission) to be furnished by the customer to the contractor after the conclusion of the contract shall be effective unless made in a written form.

1.6 These General Terms and Conditions of Sale and Delivery shall be applicable exclusively to business dealings with entrepreneurs, legal entities under public law, or special funds under public law as defined in section 310, subsection 1 of the German Civil Code (BGB).

## **2. Price and payment**

- 2.1 Every price shall be ex works of the contractor, and exclusive of packaging; packaging shall be invoiced on a separate basis. Value-added tax shall be invoiced in addition.
- 2.2 Unless otherwise agreed, the payment of the purchase price shall be made in cash and without any cash discount not later than 30 days after the invoice date.
- 2.3 The contractor shall be entitled not to perform any delivery or service outstanding unless against advance payment or provision of security in the event of any failure to comply with the terms of payment or if the contractor, after having concluded the contract, becomes aware of any risk to the claim for payment due to the customer's lacking ability to pay.
- 2.4 Payment retention or offsetting against any claim of the customer shall be excluded when such claim is disputed by the contractor, has not been recognized by the contractor, and has not been recognized by declaratory judgment.

## **3. Delivery period**

- 3.1 The start of a delivery period agreed shall be subject to the prior settlement of every technical or commercial question. A delivery deadline shall be deemed met when, prior to its expiry, the delivery item has left the contractor's works, or when readiness for dispatch has been notified to the customer.
- 3.2 The observance of any delivery period shall be subject to correct and timely supplies to ourselves; any delay, which becomes apparent, shall be communicated by the contractor as soon as possible.
- 3.3 The delivery deadline shall be extended by a reasonable period in the event of industrial action or of any contingency which is beyond the contractor's sphere of control. The foregoing shall also apply if any such hindrance occurs after a delay has already been incurred.
- 3.4 The customer shall be entitled to claim compensation for any loss or damage incurred by the customer due to any delay for which the contractor is responsible, including but not limited to any date of delivery or performance firmly agreed with the customer. In the event of ordinary negligence, such compensation, for every full week of deadline date overrun, shall amount to 0.5 % as a whole but shall not exceed a maximum of 5% of the partial or total net order not delivered on time as a consequence of any such delay. Notwithstanding any further claim for compensation pursuant to item 7.5 above, any additional claim for compensation based on culpable delay shall be excluded in the event of ordinary negligence.

- 3.5 If shipping is delayed due to any circumstance under the customer's control, the storage costs incurred with any third party or, for storage at the contractor's location, 0.5 percent of the invoice amount per month shall be invoiced to the customer, starting on the 14<sup>th</sup> day after the day at which readiness for shipping has been notified.
- 3.6 After an additional period of time granted by the contractor has elapsed without any result, the contractor shall be entitled to use the delivery item otherwise and to make delivery to the customer subject to a reasonable extension of the delivery period.
- 3.7 Compliance with the delivery deadline shall be subject to the observance of the customer's obligations as defined in the purchase agreement.

#### **4. Transfer of risk and receipt of delivery item**

- 4.1 Risk shall pass to the customer upon the transfer of the delivery item to a forwarding agent, carrier or collector, or when carried by any means of transport belonging to the contractor but not later than when leaving the contractor's works.

Upon the customer's written request, an insurance against breakage, transport damage or damage by water or fire shall be taken out for the consignment by the contractor at the customer's expense.

- 4.2 Risk shall pass to the customer on the date of readiness for dispatch if shipment is delayed due to any circumstance not under the contractor's control. The contractor shall agree to insure the delivery item against any damage upon the customer's written request. Any cost thereof shall be at the customer's expense.
- 4.3 The customer shall take delivery of any object unless it presents any material defect without prejudice to any right resulting from item 7 of these Terms and Conditions of Sale.
- 4.4 Partial deliveries shall be permitted if and where the customer may be reasonably expected to take such delivery.

#### **5. Reservation of title**

- 5.1 The contractor shall reserve ownership in the item purchased until every payment from the supply contract has been received. If the customer commits any act contrary to the contract including, but not limited to any default in payment, the contractor shall be entitled to take back the item purchased. The fact that the contractor takes back the item purchased shall constitute a rescission of contract. After taking it back, the contractor shall be entitled to realize the item purchased, and the proceeds of such realization shall be credited to the customer's accounts payable after deducting reasonable realization cost.

- 5.2 The customer shall agree to treat the purchased item with care; this shall include but shall not be limited to insuring the item purchased sufficiently against any damage by fire, water or theft at its reinstatement value and at the customer's expense. Where required, any maintenance and inspection work shall be carried out by the customer at its expense and in good time.
- 5.3 The customer shall give immediate written notice to the contractor in the event of any levy of execution or any other impairment by any third party. The customer may neither pledge the item purchased nor make any assignment thereof as security to any third party.
- 5.4 Upon the customer's request, the contractor shall release any security to which the contractor may be entitled where the realizable value of such security exceeds the claims to be covered by more than 10 %; the selection of the collateral to be released shall be made by the contractor.

## **6. Liability for defects in delivery**

- 6.1 Every part which, within a period of 12 months after its delivery, presents any redhibitory defect caused by any circumstance which occurred prior to the transfer of risk shall be either reworked or replaced at the contractor's option subject to the latter's reasonable discretion. The discovery of any such defect shall be notified to the contractor in writing and without any delay.

Any claim based on a defect shall become statute-barred after 12 months irrespectively of its legal basis. The foregoing shall not apply neither to any defect in a structure nor to any item used for a structure and having caused such redhibitory defect. In derogation of sentence 3, the statutory time limits shall also apply to any claim under the German Product Liability Act and to any intentional or fraudulent act, in the event of any entrepreneur recourse and in any other event as described in item 7.5. Any part replaced shall become the contractor's property.

- 6.2 No warranty shall be assumed for any loss or damage due to any of the causes listed below:
- Unsuitable or improper use;
  - Incorrect installation or start-up by the customer or by any third party;
  - Improper or negligent handling of the delivery item with regard but not limited to any operating instructions available;

- Exposure to excessive stress and strains; and
  - Use of any unsuitable operating media or substitute material.
- 6.3 After reaching mutual understanding with the contractor, the customer shall allow sufficient time and opportunity to the contractor for making any rework or substitute delivery as considered necessary at the contractor's reasonable discretion; the contractor shall be exempted from liability for defects otherwise. The customer shall not be entitled neither to correct any defect on his or her own nor to have any defect corrected by any third party, and claim reasonable compensation from the contractor for any expenditure required thereby unless in urgent cases which cause a hazard to operational safety, and in which the customer shall be notified with no delay.
- 6.4 From the immediate cost caused by defect rework or substitute delivery, the contractor shall pay the cost of any replacement part including shipping and reasonable cost incurred by removal and installation provided that any such complaint should be considered justified.
- 6.5 Liability shall be cancelled for the consequences brought about by any modification or repair work which has been performed improperly by the purchaser or by any third party without the contractor's prior authorisation.
- 6.6 Pre-owned delivery items shall not be sold unless excluding any liability for material defects. Such exclusion shall not be applicable to any claims for damages resulting from liability for material defects if based on any grossly negligent or intentional breach of duty by the contractor or in the event of any injury to life, body, or health.
- 6.7 No further claim of the customer shall exist, including, but not limited to any claim for the compensation of any loss or damage not caused in the delivery item itself, unless in the events as defined in item 7.5 of these Terms and Conditions of Sale.
- 6.8 Unless as otherwise agreed, the contractor shall make its deliveries within Germany free from any industrial property right and copyright of any third party. If there should still be a corresponding infringement of an industrial property right, the customer shall either obtain a corresponding right of use from such third party, or modify the delivery item in a manner which ensures that there will be no more infringement of an industrial property right. Where the foregoing may not be expected at reasonable conditions from the contractor, both the contractor and the customer shall be entitled to rescind the contract.
- 6.9 The provisions set forth in this item 6 shall apply mutatis mutandis in other respects if there is any deficiency in title while no claim of the customer shall exist unless the customer notifies the contractor of any such claim

raised by any third party in writing and without any delay, does not recognize any alleged act of infringement neither directly nor indirectly, every opportunity for defence is maintained for the contractor without any restriction whatsoever, the infringement of any such right is not based on any modification to the delivery item made by the customer or any use thereof contrary to the agreement, and any such deficiency in title is not due to any instruction given by the customer.

## **7. Customer's rights to rescind the contract, reduce the price, and other contractor liability**

- 7.1 The customer may rescind the contract if complete performance by the contractor prior to the transfer of risk becomes definitely impossible. The same shall be applicable if the contractor is unable to perform. In addition, the customer may also rescind the contract if the performance of a part of a delivery becomes impossible in terms of quantity when ordering objects similar in type, and if the customer has a legitimate interest in rejecting a partial delivery. If the foregoing is not the case, the customer may reduce consideration accordingly.
- 7.2 The customer shall be entitled to rescind the contract if there is any delay in delivery as defined in item 3 of these Terms and Conditions of Sale, and if the customer grants a reasonable time extension to the contractor in default, and if such time extension is not observed.
- 7.3 The customer shall remain obligated to give consideration if impossibility of performance occurs while the customer is in default of acceptance or due to any fault of the customer.
- 7.4 Furthermore, the customer shall be entitled to rescind the contract if the contractor has allowed a reasonable time extension set by the customer for defect remedy to elapse without fulfilment. The customer's right to rescind the contract shall also exist in the event of any other failure of the contractor to remedy a defect or provide replacement.
- 7.5 No other claim for compensating any loss or damage whatsoever, including any loss or damage not caused to the delivery item itself, shall exist unless as follows:
- When caused intentionally;
  - When caused by gross negligence committed by the proprietor, by any executive body or by any executive employee;
  - In the event of injury of life, body or health;
  - In the event of any culpable non-observance of essential duties under the contract where the fulfilment of the purpose of the contract is put at risk with regard to the foreseeable damage or loss typical of the contract;

- If and where the German Product Liability Act provides for liability for personal injury or material damage of any object used for private purposes in the event of any defect in an item delivered;
- For any defect which has been fraudulently concealed;
- Within the scope of any promise of guarantee.

In other respects, any further claim shall be excluded.

## **8. Liability for collateral duties**

The provisions as set forth in sections 6 and 7 of these Terms and Conditions of Sale shall apply mutatis mutandis excluding any further claim of the customer if the delivered item may not be used by the purchaser as provided for in the contract through any fault by the contractor, due to any failure to perform or any defective performance of any proposal or consulting made or given either before or after contract conclusion or any other subsidiary duty under the contract, including but not limited to any instruction for the operator control and maintenance of such delivered item.

## **9. Place of performance, place of jurisdiction and final provisions**

- 9.1 The place of performance and the exclusive place of jurisdiction, also in case of summary procedures relying entirely on documentary evidence and legal proceedings related to bills of exchange, applicable to both parties and to any claims, whether present or future, resulting from this business relationship shall be the contractor's principal place of business or, at the contractor's option, the place of business of the branch establishment which concluded the contract provided that the customer is a merchant, a legal entity under public law or a special fund under public law.
- 9.2 No subsidiary agreement shall have been made, and no amendment to this contract shall be effective unless issued in writing. The foregoing shall also apply to the revocation of this agreement on written form.
- 9.3 The law of the Federal Republic of Germany shall be applicable to the exclusion of the UN Convention on the International Sale of Goods.