

Terms of Sale and Delivery

1. Validity

- 1.1 Any and all offers, sales and deliveries by the Seller shall be made subject to these Terms of Sale and Delivery as amended from time to time. Any purchase terms of the Purchaser or any diverging agreements shall be deemed accepted only if confirmed by the Seller in writing in form of a Supplement to these Terms of Sale.
- 1.2 Express protest is made herewith against any reference or counter-confirmation by the Purchaser relating to his purchase terms.
- 2. Offer and Conclusion of Contract**
- 2.1 Any and all offers by the Seller shall be made subject to confirmation by the Purchaser and may be revoked by the Seller any time prior to the receipt of his written declaration of acceptance. Any and all orders by the Purchaser shall become legally binding only upon written confirmation by the Seller.
- 2.2 Any and all information in brochures, circulars, advertisements, illustrations and price lists with respect to weights, measures, prices, efficiency and the like shall be non-committal, unless expressly declared to be components of the contract.
- 2.3 DIN Standards (German Industrial Standards), drawings, weights and measures, plans, references in advertising leaflets as well as the term "suitable for" shall not be deemed warranted characteristics.
- 3. Volume of Delivery/Prices**
- 3.1 In the absence of any specific agreements the prices shall be quoted ex works plus the effective rate of statutory value-added tax charged in the Federal Republic of Germany. Any additional expenses such as packing, transport, insurance, customs duty etc. as well as Installation costs shall be charged separately. Pricing shall be made in Euro.
- 3.2 As for the volume of delivery, the dates specified by the Seller in his confirmation of order or, in the absence of such confirmation of order, the dates of Seller's offer shall be authoritative.
- 3.3 The Seller shall be authorized to make technical modifications in the article of sale, if such modifications are not derogatory to the technical function of the machine.
- 4. Time of Delivery, Default and Impossibility**
- 4.1 The delivery date shall be the date stipulated in writing in the confirmation of order or, in the absence of such confirmation of order, the date specified in writing in the Seller's offer, provided the Purchaser has produced any and all documents, permits or licenses, releases, construction details etc. he is obliged to produce within the period of time agreed upon.
- 4.2 The time of delivery shall be deemed observed, if by the end of such period the article of sale has left the Seller's plant or if the Seller has informed the Purchaser that the goods are ready for dispatch.
- 4.3 Irrespective of the Seller's rights arising from default of the Purchaser, the stipulated time of delivery shall be extended by the period of time the Purchaser is in default in meeting his obligations under this contract. This applies in particular in case the terms of payment agreed upon are not observed as well as in case the Purchaser fails to produce the documents, permits etc. stipulated in sub-item 4.1 hereof.
- 4.4 If the Purchaser is the ultimate buyer of the article of sale, any Claims for damages on account of Seller's delay in delivery shall be precluded, unless the damage is caused intentionally or by gross negligence by the Seller, his officers, vicarious agents or any person employed by the Seller in the performance of his obligations.
- 4.5 Sub-item 4.4 shall apply mutatis mutandis to any claims for damages caused by subsequent impossibility.
- 4.6 The provisions of sub-items 4.4 and 4.5 shall not affect any rights of the Purchaser to rescind the contract.
- 4.7 If the Purchaser fails to take delivery at the contractual date, he shall reimburse to the Seller any and all expenses incurred by storing up the article of sale. In such case, the seller may further grant an additional period of time of reasonable length and, after such period has lapsed, may, at his option, dispose of the article of sale, or rescind the agreement, or claim damages for non-performance and default.
- 5. Force Majeure**
- 5.1 If the Seller is prevented from performing his obligations by the occurrence of any unforeseeable exceptional circumstances which the Seller is unable to avert despite all diligence to be reasonably expected under the prevailing circumstances - irrespective if such circumstances occur at the Seller's works or with the Seller's subcontractors-, such as breakdown, government sanctions and interventions, delays in the supply of essential raw materials and construction materials, energy shortage, the time of delivery shall be extended by a reasonable period of time, provided the above circumstances pause actual delays and do not render delivery of performance impossible. If such circumstances make delivery or performance impossible, the Seller shall be released from his obligation to deliver.
- 5.2 Also in case of strike and lock-out, the time of delivery shall be reasonably extended, if such events pause actual delays and provided delivery or performance are not rendered impossible. If delivery and performance are made impossible, the Seller shall be released from his duty to deliver.
- 5.3 If any such hindrance continues for more than two months, the Purchaser shall be entitled to rescind the agreement to the extent it is not yet performed.
- 5.4 If in the aforementioned cases the time of delivery is extended or if the Seller is released from his obligation to deliver, any claims for damages or any rights of rescission the Purchaser derives there from shall become obsolete, except for the right of rescission as provided for in sub-item 5.3 hereof.
- 5.5 If the aforementioned circumstances occur at the Purchaser's side, the same legal consequences shall apply with respect to the Purchaser's obligation to take delivery.
- 5.6 A party may plead the circumstances specified herein only after having notified the other party hereof without delay. In the absence of such notification, the legal consequences in his favour shall not ensue.
- 6. Payments**
- 6.1 Unless otherwise agreed upon, any and all invoices shall be payable immediately upon receipt. Any deposits by the Purchaser shall be credited against the delivery price. Unless otherwise agreed upon in writing, discounts shall not be allowed.
- 6.2 If there are outstanding accounts of the Purchaser, payments shall be credited against the oldest debt due.
- 6.3 Unless otherwise agreed upon in writing, payments by bill shall not be admissible. Checks shall not be deemed payment in cash and shall be accepted only in lieu of payment pending full discharge of the debt.
- 6.4 If the Purchaser is in default, the Seller shall have the right to charge interest as from the date in question in the amount of the rate of interest charged by commercial banks for open current account credits, but not less than 4% in excess of the current discount rates of the Deutsche Bundesbank. A lower rate of interest is to be fixed, if the Purchaser proves that the Seller's actual expenses are less.
- 6.5 If, after receipt of two reminders, the Purchaser fails to meet his financial obligations or to honor a check or bill or if he suspends payments, the Seller shall be authorized to accelerate the entire outstanding debt, even in case he has accepted checks or bills.
In such case the Seller shall also be entitled to refuse to meet the performances still incumbent on him until the Purchaser has made counter-performance or has rendered security.
The foregoing provision shall not prejudice any legal claims by the Seller on account of the Purchaser's default.
- 6.6 The Purchaser shall not have the right to set off a claim against that of the seller, unless such a claim is undisputed or has become res judicata.
- 7. Reservation of Title**
- 7.1 The Seller shall reserve any and all title to the article of sale until receipt of full payment under the delivery contract.
- 7.2 In case the Seller delivers spare parts to be installed into an object owned by the Purchaser, the latter shall grant to the Seller after installation a co-ownership

share in the object into which the spare parts are installed, said share being equal to the proportion of the invoice value of the spare parts to the value of the object at the time of installation. Said co-ownership share shall be held in custody by the Purchaser on behalf of the Seller, free of charge.

- 7.3 The Purchaser may neither pledge nor assign by way of security the article of sale without the Seller's consent. In case of attachment or distraint or any other disposition by a third party, the Purchaser shall inform the Seller immediately of such event, handing over at the same time the necessary documents enabling the Seller to intervene.
- 7.4 If the Purchaser's conduct is not in accordance with the agreement, in particular if he is in default of payment, the Seller shall have the right, after having made a demand for payment, to take back, and the Purchaser shall be obliged to return, the article of sale.
Neither the Seller's assertion of his reservation of title nor attachment of the article of sale on behalf of the Seller shall be considered as cancellation of the agreement.
- 8. Complaints and warranties**
- 8.1 The Purchaser shall be bound to inspect the articles delivered by the Seller for defects immediately upon receipt, such inspection also including spot checking and trial runs.
- 8.2 The Seller shall be informed in writing immediately of any complaints on account of incomplete or incorrect delivery or on account of apparent defects referred to in sub-item 8.1 hereof and the defective parts shall be returned to the Seller upon his request. Latent defects, which do not become apparent even by spot checking or trial runs, shall be communicated to the Seller immediately upon discovery. Unless complaints or defects are notified in due time, the delivery shall be deemed approved to the exclusion of any Claims for incomplete, incorrect or defective delivery.
- 8.3 If the article of sale is defective or lacks warranted characteristics or becomes defective within the warranty period, the Seller may, at his option, either effect substitute delivery or remedy the defect, both to the exclusion of any further claims by the Purchaser based on warranty. If the Seller chooses to remedy the defect, the Purchaser shall put appropriate help at the Seller's disposal. The warranty period shall commence to run from delivery of the article of sale to the Purchaser and shall terminate six months from handing over the article of sale to the Purchaser, but not later than 12 months from passing of the risk. If the regular working hours exceed more than eight hours per day, the warranty period shall be curtailed proportionately. Wear parts are excluded.
- 8.4 If the Seller is granted an additional period of time of reasonable length and allows such period of grace to lapse without effecting substitute delivery or remedying the defect or if remedy of the defect fails, the Purchaser shall be entitled to claim rescission of the sale or reduction of the purchase price.
- 8.5 Seller shall be liable for substitute deliveries and remedy of defects to the same extent as for the original article of sale. In the case of substitute deliveries the warranty period shall commence again from the beginning.
- 8.6 The expenses of remedying a defect shall be borne by the Seller to the extent as remedy of the defect is effected at the Purchaser's place of business stipulated in the delivery contract.
Any expenses incurred by transporting the article of sale to a certain place shall be borne by the Purchaser.
- 8.7 The Purchaser may not raise warranty claims
—for defects caused by improper handling or overstraining of the article of sale by the Purchaser or his customers;
—in case the article of sale is changed by a third party or by the installation of elements of foreign origin, unless there is no causal relation between defect and change;
—in case of non-observance of the Seller's written directions for the set-up, operation and attendance of the machines specified in the confirmation of order, in operating or Service instructions, etc.;
—in case the defects have to be ascribed to materials supplied by the Purchaser or to constructions prescribed by the Purchaser.
- 8.8 If the defect turns out to be caused by a circumstance for which the Seller is not liable under the warranty, the Purchaser shall reimburse the Seller for any and all expenses incurred in this connection.
- 8.9 Warranty claims against the Seller may be raised only by the immediate Purchaser and shall not be assignable.
- 9. Other Claims for Damages**
- 9.1 Any damage claims for breach of contract, for culpa in contrahendo or tort against the Seller or his vicarious agents or any person employed by him in the performance of his obligations shall be precluded, unless the Seller, his officers, vicarious agents or any persons employed by him in the performance of his obligations have acted intentionally or in gross negligence.
- 9.2 If the damage claim on account of expressly warranted qualities is asserted against the Seller, the volume of damage shall be limited to the scope of the warranty and to the damages foreseeable at the date of conclusion of the agreement. Any claims for loss or profit and/or loss of production shall be precluded in any case.
- 9.3 If, pursuant to sub-item 9.1, a claim based on product liability is asserted against the Seller, it is incumbent on the Purchaser to furnish evidence of the existence of a product defect as well as of the causal relation between product defect and damage, such evidence to be submitted in form of an expert opinion. Evidence, if any, exonerating the Seller from blame shall be furnished by the Seller in form of verifiable documentation of quality maintenance.
- 10. Transfer of Risk**
- 10.1 If an article of sale is dispatched to the Purchaser upon his request, the risk of accidental loss or accidental deterioration of the article of sale shall pass to the Purchaser on delivery of the article to the forwarding agent, carrier or conveying agent. The same shall apply, if dispatch is effected from a place other than the place of performance and if the freight charges are borne by the Seller.
- 10.2 If the article of sale is ready for dispatch and if shipment is delayed for reasons for which the Seller is not responsible, the risk shall pass to the Purchaser upon receipt of the Seller's notice that the goods are ready for shipment.
- 11. Place of Performance, Applicable Law, Venue, Written Form and Partial Nullity**
- 11.1 The place for payment and delivery shall be D-88512 Mengen.
- 11.2 These Terms of Sale and Delivery and the entire legal relationship between the Seller and the Purchaser shall be governed by the law of the Federal Republic of Germany to the exclusion of the Convention Relating to a Uniform Law on the International Sale of Goods and the Convention Relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods.
- 11.3 The courts at the Seller's place of business shall have exclusive jurisdiction over any and all disputes arising directly or indirectly from the contractual relationship. If the Seller appears as plaintiff, he may, but is not obliged to, bring his case before the courts at the Purchaser's place of business.
- 11.4 Any collateral agreements, reservations, amendments or Supplements shall be valid only subject to the written approval by the Seller.
- 11.5 If any provision of these Terms of Sale and Delivery or any provision within the framework of other agreements is or becomes inoperative, such inoperativeness shall not affect the effectiveness of the remaining provisions and agreements. In such case the ineffective provision shall be construed or supplemented so as to answer in a legally unobjectionable manner the economic purposes intended by the inoperative provision.