



# MASCHINENBAU SCHOLZ GMBH & CO. KG

48653 COESFELD, GERMANY

## General Terms and Conditions of Sale and Delivery

### I. Conclusion of contract/Transfer of Customer's rights:

1. These terms and conditions shall apply to the conclusion of contracts with persons who conclude said contracts in the performance of their commercial or independent professional activities (enterprises) as well as to legal persons or special funds under public law.
2. Sale and delivery shall be performed exclusively under the Supplier's general terms and conditions of sale and delivery below. They shall also apply to future transactions even if the Supplier does not refer to them in each individual case. The Customer's general terms and conditions shall not be an integral part of the contract even if the Supplier does not expressly contradict them.
3. The Supplier shall submit the first quotation free of charge unless payment has been expressly agreed. Further quotations and drafts shall not be provided free of charge unless the supply contract has become and remains legally effective, failing which the Supplier shall invoice the costs incurred.
4. The documents belonging to the quotation, such as illustrations, drawings, weights and measurements, are only approximations unless they are expressly designated as being binding. The Supplier shall retain title and copyrights to cost estimates, drawings and other documents; they shall not be made accessible to third parties. The Supplier shall be obliged not to make drawings which the Customer has identified as being confidential accessible to third parties without the Customer's consent.
5. The Supplier's written order acknowledgement shall govern the scope of delivery. Amendments and supplements to the contract as well as collateral agreements shall require the Supplier's written acknowledgement to become effective. Any waiver of this requirement shall also be made in writing.

Protective facilities shall also be supplied insofar as this has been agreed.

6. The assignment of Customer's claims arising from the contract shall require the Supplier's written consent to be effective. Said requirement for consent shall not apply to the assignment of the Customer's claims for money arising from the contract if the contract is a commercial transaction for both parties. If the assignment of Customer's claims is effective without the Supplier's consent, the Supplier may make payment to the Customer as the previous creditor with the effect of discharging his obligation.

### II. Prices:

1. The prices are in euros and, unless otherwise agreed, shall apply ex works including loading at the works but packing excluded. The prices shall be subject to the current rate of value-added tax which shall be paid in addition. Any additional services agreed on shall be charged extra.
2. Price changes for customers who are not merchants as defined by German law shall only be admissible if the period of time between the conclusion of the contract and the agreed delivery date is more than four months; in this case the Supplier's price valid on the date of delivery shall apply. However, the Customer shall, in this case, be entitled to rescind the contract by registered letter within a period of two weeks from receipt of notification of the price change. The Customer shall not be entitled to do so if the Supplier insists on performing the contract at the price which was valid on conclusion of the contract.
3. The Supplier's prices valid on the date of delivery shall apply to customers who are merchants as defined by German law where the contract is part of the running of the business, to legal entities incorporated under public law or special funds incorporated under public law; changes in the rate of VAT in particular shall entitle the Supplier to amend his prices accordingly.

### III. Payment:

1. Unless otherwise agreed, payment shall be made in cash without any deductions and free the Supplier's place of payment as follows:
  - $\frac{1}{3}$  down payment on receipt of the order acknowledgement
  - $\frac{1}{3}$  on receipt of notification that the goods are ready for shipment
  - $\frac{1}{3}$  on handover and issuing of the invoice but not later than one month after receipt of notification that the goods are ready for shipment.
2. If the payment deadline has passed, the Supplier shall be entitled to demand interest at a rate of 8 percentage points above the base interest rate; this shall apply to merchants as defined in German law, legal persons and special funds under public law without said persons having to be in arrears. In the case of non-commercial business, the Supplier shall be entitled, if the payment deadline is culpably exceeded, to demand interest on arrears in the aforementioned amount. The





interest rate shall be set higher or lower if the Supplier proves that he is paying a higher interest rate or if the Customer proves that he is paying a lower interest rate.

3. Payment orders, cheques and bills of exchange will not be accepted without a special agreement and only on account of payment. The Customer shall bear any discount or bill charges and any other costs.
4. The Customer shall waive the right to assert any right of retention arising from earlier or other transactions in the past business relationship. Furthermore, the Customer is only permitted to assert any rights of retention and offset payment against counterclaims insofar as such claims are recognised by the Supplier and have been established as being due for payment or *res judicata*.
5. If the Customer has any obvious payment difficulties, including but not limited to default on payment, protesting of a cheque or bill, discontinuation of payment or the filing of a petition for the institution of composition or bankruptcy proceedings, the Supplier shall be entitled to make all outstanding – and deferred – invoice amounts payable immediately and to demand payment in cash or the provision of security in return for bills accepted on account of payment and to make any further deliveries only against cash in advance. The Supplier shall not be entitled to make the outstanding claims payable immediately if the Customer is not to blame for being in arrears.
6. If the Customer defaults on payment, the Supplier may, notwithstanding his rights under Section VI., Para. 8, grant the Customer in writing a period of grace of 14 days, starting that, on expiry of this deadline, the Supplier will not accept the performance of the contract by the Customer. If this period of grace passes to no avail, the Supplier shall be entitled to rescind the contract in writing or demand damages for non-performance.

#### IV. Delivery:

1. Delivery dates or delivery periods, which may be agreed as binding or not binding, shall be given in writing. The delivery period shall commence with the mailing of the order acknowledgment but not before the submission of the documents, permits, releases etc. to be provided by the Customer and before receipt of any agreed down payment. If amendments to the contract are subsequently agreed, it may be necessary at the same time to agree on a new delivery date or delivery period.
2. The delivery period shall be deemed to have been observed if, before it expires, the goods have left the works or notification has been given that they are ready for dispatch.
3. The delivery period shall be prolonged by a reasonable period if hindrances occur – for example, disruptions to operations, delays in the supply of important raw and building materials – for which the Supplier is not responsible, irrespective of whether these hindrances arise at the Supplier's or his subcontractors' works provided that such hindrances verifiably have a sig-

nificant effect on the completion or dispatch of the goods. The Supplier shall also not be responsible for the aforementioned circumstances even if he is already in default on delivery. The Supplier shall notify the Customer as soon as possible when such hindrances start and end.

4. If a non-binding delivery date or delivery period has passed, the Customer may demand in writing that the Supplier delivers within a reasonable period. The Supplier shall be in default once this reminder is issued. In addition to delivery of the goods, the Customer may only demand damages on the grounds of default if said default is attributable to a wilful or grossly negligent breach of any material contractual obligation. Should the Supplier, without wilful or gross negligence, also be liable on the basis of mandatory provisions, the compensation for default shall be 0.5 % for each full week of delay but altogether a maximum of 5 % of the value of that part of the total delivery which cannot be used on time or in accordance with the contract as a result of the delay.
5. If the Supplier defaults, the Customer shall also be entitled to set a reasonable period of grace in writing, stating that he will refuse to accept the goods after expiry of said period. If this period of grace expires to no avail, the Customer shall be entitled to rescind the contract in writing or demand damages for non-performance. Such damages shall be limited to max. 10 % of the agreed price in the event of ordinary negligence. If the Customer is a merchant as defined by German law and the contract is part of the running of the business, a legal entity incorporated under public law or a special fund incorporated under public law, he shall only be entitled to claim for damages if the Supplier has committed a wilful or grossly negligent breach of a material contractual obligation. The Supplier shall only be liable for untypical and unforeseeable damage in the amount of typical damage which is foreseeable on conclusion of the contract. Any right to delivery shall be excluded in the cases covered by this paragraph.
6. If a binding delivery date/delivery period is passed, the Supplier shall already be deemed to be in default when the delivery date or delivery period is passed. The Customer's rights shall then be governed by the above provisions of this section.
7. In addition to the above, the general provisions on liability in Section VIII. of these conditions shall apply to any claim for damages for default regulated above.
8. If shipment is delayed at the Customer's request, he shall be charged, commencing one month after notification that the goods are ready for shipment, the storage costs incurred but, if the goods are stored at the Supplier's works, at least 0.5 % of the invoice amount for each month.

#### V. Shipment and passing of risk:

1. The goods shall be transported at the Customer's risk, even in the case of carriage paid deliveries, and, unless specific instructions on shipment have been issued,





at the Supplier's discretion without any obligation to choose the cheapest method of shipment.

2. The risk of accidental loss and accidental deterioration shall pass to the Customer not later than on dispatch of the goods, even if part shipments are made or the Supplier has undertaken to bear other costs for work, e. g. in relation to shipment or carriage and installation. At the Customer's request, the consignment shall be insured at his expense by the Supplier against breakage, damage in transit, and damage caused by fire or water.
3. If shipment is delayed as a result of circumstances for which the Supplier is not responsible, the risk of accidental loss or accidental deterioration shall pass to the Customer on expiry of the eighth day after receipt by the Customer of notification that the goods are ready for shipment. However, the Supplier shall be obliged, at the Customer's request and expense, to arrange any insurance cover which the Customer demands.
4. If the Customer culpably falls behind with the acceptance of the delivery by more than 14 days from receipt of notification that the goods are ready for shipment, the Supplier may grant the Customer in writing a period of grace of 14 days, stating that, on expiry of this period of grace, the Supplier will reject the acceptance procedure. If the period of grace expires to no avail, the Supplier shall be entitled to rescind the contract in writing or to demand damages for non-performance. The Supplier does not need to grant a period of grace if the Customer seriously and definitely refuses to accept the goods or is obviously unable to pay the purchase price also within the above initial period of 14 days. In such cases the goods do not need to be made ready for shipment.
5. If the Supplier demands damages, they shall be 15% of the invoice amount. The amount of damages shall be revised upwards or downwards if the Supplier proves that damages were higher or if the Customer proves that damages were lower, respectively.
6. If, in the case under para. 4, the Supplier does not make use of the rights in accordance with paras 4 and 5, he may freely dispose of the contractual goods and instead supply equivalent goods under the contractual conditions within a reasonable period.
7. The Customer shall take receipt of any goods delivered, even if they exhibit immaterial defects, notwithstanding the rights under Section VII.
8. Part deliveries shall be admissible.

#### **VI. Reservation of title:**

1. The goods supplied shall remain the Supplier's property until settlement of the Supplier's rightful claims arising from the contract. Reservation of title shall also apply to all claims which the Supplier subsequently acquires against the Customer in connection with the goods supplied, e. g. owing to repairs or spare parts deliveries and any other services.

If the Customer is a merchant as defined by German law where the contract is part of the running of the business, a legal entity incorporated under public law or a special fund incorporated under public law, reservation of title shall also apply to the claims which the Supplier has against the Customer from his current business relationships. At the Customer's request, the Supplier shall be obliged to waive the reservation of title in accordance with para. 4 of this Section.

If the Supplier has any liability under a bill of exchange in connection with the Customer's payment of the contractual goods, reservation of title shall not lapse before the end of the Supplier's liability under a bill of exchange.

If the Customer has a current account, the property subject to reservation of title shall also be deemed to be security for the balance of claims against the Customer.

2. The machining or processing of the goods delivered by the Supplier shall be performed on behalf of the Supplier as the manufacturer pursuant to Section 950 of the German Civil Code [BGB] without placing the Supplier under any obligation. The goods produced as a result of the machining or processing shall also be deemed to be goods subject to reservation of title pursuant to these terms and conditions. If the Supplier's goods are mixed or processed with other articles not belonging to him, the Supplier shall have the right of joint ownership in the goods produced as a result of mixing or processing in the ratio of the sum of the invoice values of the Supplier's goods to the third-party goods used. The new article shall not be deemed to be the principal article pursuant to Section 947, para. 2, of the German Civil Code.
3. The Customer shall only be entitled to resell the goods subject to reservation of title during the normal course of business and only in accordance with the following paragraph:

The Customer shall assign to the Supplier here and now his claims arising from the processing, resale and installation of the goods subject to reservation of title in the amount corresponding to the value of the goods subject to reservation of title.

If the goods are resold together with other goods not belonging to the Supplier for an inclusive price, the Customer shall assign to the Supplier here and now his claims arising from the resale in the amount corresponding to the value of the goods subject to reservation of title.

If goods subject to reservation of title in which the Supplier has joint ownership are resold, the Customer shall assign to the Supplier here and now his claim arising from the resale in the amount corresponding to the Supplier's pro-rata share in the goods subject to joint ownership. If the Customer installs the goods subject to reservation of title as important components on the premises of a third party, the Customer shall assign to the Supplier the claim to payment due to the Customer against the third party or whoever it may





concern, said claim corresponding to the value of the goods subject to reservation of title. If the goods subject to reservation of title are jointly owned by the Supplier, the claim shall be assigned to the value of the Supplier's pro-rata share in the goods subject to joint ownership.

The value of the goods subject to reservation of title pursuant to the above provisions is the value of the Supplier's invoice plus a surcharge of 20 % as security. The Supplier shall determine the order of priority of an assigned partial amount in relation to the total amount owed by the Customer.

The Supplier shall authorise the Customer, subject to revocation, to collect the claim arising from the resale. The Supplier shall not avail himself of his own authority to collect as long as the Customer meets his payment obligations. On request, the Customer shall name the debtors of the assigned claims to the Supplier and notify said debtors of the assignment. The Supplier is herewith authorised to notify the debtors of the assignment on behalf of the Customer.

4. If the value of the securities granted to the Supplier exceed his claims by more than 20 %, the Supplier shall, at the Customer's request, be obliged to re-assign or release said securities at his discretion in that amount. The valuation of the securities shall be governed by the invoice value for the goods delivered by the Supplier which are subject to reservation of title and the amount of the assigned claim for the claims assigned as security. Ownership of the goods subject to reservation of title shall pass to the Customer on payment in full of all the Supplier's claims arising from the business relationship. At the same time the Customer shall acquire the claims which he has assigned to the Supplier as security for the Supplier's claims in accordance with the above provisions.
5. As long as reservation of title exists, the sale, pledging, assignment as security, hiring-out or any other transfer of or change in the purchased goods which negatively affects the Supplier's security shall not be permitted without the Supplier's prior written consent.
6. In the event of any attachment by third parties, including but not limited to the seizure of the contractual goods, the Customer shall notify the Supplier in writing without delay and inform the third parties of the Supplier's reservation of title. The Customer shall bear all the costs which have to be paid to dissolve the attachment and to recover the contractual goods insofar as they cannot be collected from third parties.
7. The Customer shall be obliged to keep the contractual goods in a proper condition for the duration of the reservation of title.
8. During the period of the reservation of title the Customer shall be entitled to have possession of and make use of the goods supplied as long as he fulfils his obligations arising from reservation of title in accordance with the provisions of this Section and does not default on payment. If the Customer defaults on payment or does not fulfil his obligations arising from reservation of title,

the Supplier may, in addition to asserting his rights in accordance with Section III, para. 6, of these conditions, demand that the Customer return the contractual goods and may, after written notification setting a reasonable deadline, dispose of the contractual goods as best as possible through private sale, offsetting the proceeds from such sale against his claims. In the case of hire purchase agreements with merchants as defined by German law where the contract is part of the running of the business, with legal entities incorporated under public law or special funds incorporated under public law, this repossession shall not be deemed to be a rescission of the contract.

If the Supplier demands the surrender of the contractual goods, the Customer shall be obliged, to the exclusion of any rights of retention – unless they are based on the purchase contract – to return the contractual goods to the Supplier without delay. At the Customer's request, which may only be expressed immediately after the return of the contractual goods, a publicly appointed or certified expert chosen by the Supplier shall estimate the price. The Supplier shall be obliged to offset this estimated price of the contractual goods against his claims.

The Customer shall bear all the costs of the return and disposal of the contractual goods. Without substantiation, the disposal costs shall amount to 5 % of the proceeds from the disposal including value-added tax. These costs shall be revised upwards or downwards if the Supplier proves they are higher or if the Customer proves they are lower, respectively. The proceeds shall be credited to the Customer after deduction of the costs and any other claims of the Supplier relating to the contract.

## VII. Warranty:

1. Data in descriptions valid on conclusion of the contract relating to performance, dimensions, weights and running costs of the contractual goods are an integral part of the contract. These data shall be regarded as approximations and not as a guarantee for the properties but shall serve as a guide to establish whether the contractual goods are free of defects in accordance with the following provisions. Property guarantees shall be expressly identified as such.
2. Notwithstanding the Customer's right to demand a reduction in the purchase price or rescission of the contract if the repairs or replacement delivery fail, the Supplier shall assume the following liability for defects in newly manufactured goods:
  - a) All those parts which become unusable or substantially impaired in their use within 12 months from commissioning as the result of circumstances predating the passing of risk – including but not limited to faulty design, inferior materials or poor workmanship – shall be repaired or replaced without charge at the Supplier's reasonably exercised discretion. The discovery of such defects shall be reported to the Supplier without delay. Any parts replaced shall become the property of the Supplier.





Of the costs incurred as a result of the repairs or replacement delivery, the Supplier shall – insofar as the complaint proves justified – bear the costs of the replacement part including delivery as well as the reasonable costs of dismantling and installation, furthermore, if this can be reasonably demanded depending on the circumstances of the individual case, the costs of any necessary provision of his fitters and auxiliary workers. The Supplier shall not bear the cost of the disproportionate expense of repairs nor additional costs which arise from the improper relocation of the article. Any parts replaced shall become the property of the Supplier.

- b) In the case of third-party products, the Supplier's liability shall be limited to the assignment of his liability claims against the supplier of the third-party products. If the Customer has tried unsuccessfully to claim against the third party as a result of the assigned claims, the Supplier shall also be liable for the third-party products in accordance with this Section.
- c) The Customer's right to assert claims arising from defects shall in each case become statute-barred after 6 months from the time of punctual notification of the defect but not earlier than on expiry of the warranty period.

If shipment, installation or commissioning is delayed without any fault of the Supplier, the liability shall lapse not later than 12 months after the passing of risk.

- d) The Customer shall, after consultation with the Supplier, grant the latter the necessary time and opportunity to perform all repairs and replacements which the Supplier may deem necessary; otherwise the Supplier shall be released from his liability for the resultant consequences. The Customer shall only have the right in urgent cases where operational safety is jeopardised or to prevent disproportionately major damage, of which the Supplier is to be notified without delay, to remedy the defect himself or have it remedied by third parties and to demand reasonable compensation for the necessary costs from the Supplier.
- e) Replacement parts and repairs shall be covered by the warranty in the same way as the goods supplied. The liability period for defects in the goods supplied shall be extended by the length of time for which operations were interrupted as a result of the repair work.
- f) If the defect is not substantial, the Customer shall merely have the right to a reduction in the purchase price instead of the above-mentioned rights. In other cases the right to a reduction in the purchase price shall be excluded.
- g) The Supplier shall not assume any liability for damage which has occurred for the following reasons:

Inappropriate or improper use, incorrect assembly and/or commissioning by the Customer or third parties, natural wear and tear, incorrect or negligent handling – including but not limited to excessive loading – incorrect maintenance, inappropriate process materials, inadequate structural work, unsuitable foundations,

chemical, electrochemical or electrical influences provided that they are not attributable to any fault of the Supplier.

- h) The Supplier shall not assume any liability for the consequences resulting from any repair work performed improperly by the Customer or third parties. The same shall apply to any alterations to the goods supplied undertaken without the Supplier's prior consent.
3. Any warranty shall be excluded for the supply of used goods unless the matter relates to a fraudulently concealed defect, the omission of a property for which the Supplier has assumed a warranty or a case of wilful deceit.
4. The Supplier shall assume the following warranty of title:

If the use of the goods supplied results in an infringement of industrial property rights or copyrights in Germany, the Supplier shall grant the Customer free of charge the right of further use or modify said goods in a manner acceptable to the Customer in such a way that the property rights are no longer infringed.

If this is not possible on economically reasonable conditions or within a reasonable period, the Customer shall be entitled to rescind the contract. Under the above-mentioned conditions, the Supplier shall also be entitled to rescind the contract.

Furthermore, the Supplier shall indemnify the Customer for undisputed claims or claims which have become res judicata of the property right owners in question. The aforementioned provisions on legal remedies shall be final, subject to Section VIII in the event of an infringement of a property right or copyright. They shall only exist if

- the Customer notifies the Supplier without delay of any property right or copyright infringement which has been asserted,
- the Customer assists the Supplier to a reasonable extent in averting the claims asserted or permits the Supplier to perform the above-mentioned modifications,
- the Supplier reserves the right to take all defensive action including out-of-court settlements,
- the defect of title is not based on an instruction of the Customer and
- the infringement of a right was not caused by the fact that the Customer changed the goods arbitrarily or used them in a non-contractual manner.

#### VIII. Liability:

The Supplier shall only be liable for damage arising from

- wilful intent
- gross negligence by the owner, bodies or executive staff
- culpable injury to life, limb and health





- defects which the Supplier fraudulently concealed insofar as liability is assumed in accordance with the German Product Liability Law for personal injury or property damage to privately used goods.

The liability for the slightly negligent breach of contractual obligations shall be limited to the compensation of the damages, which are typical for the contract and which can be reasonably foreseen at the time of conclusion of the contract.

#### **IX. Limitation of actions:**

Any and all claims of the Customer – for whatever legal grounds – shall become statute-barred in 12 months. The statutory deadlines shall apply to wilful and fraudulent conduct as well as to claims arising from the German Product Liability Law. They shall also apply to defects in a structure or to goods supplied which were used for a structure in line with their usual customary of use and which caused its defectiveness.

#### **X. Place of performance, venue and applicable law:**

The place of performance shall be the company's works designated by the Supplier.

The court having jurisdiction over the Supplier's domicile is herewith agreed as the venue for any and all disputes arising from business transactions with merchants as defined by German law who are not included in the businesses designated in Section 4 of the German Commercial Code [HGB], legal entities incorporated under public law or special funds incorporated under public law. The Supplier shall also be entitled to institute legal action at the location of the Customer's head office.

The law of the Federal Republic of Germany shall govern the relationships between the contracting parties.

#### **XI. Invalid provisions:**

Should any of the above provisions be or become invalid, the validity of the other provisions shall remain unaffected. The invalid provision shall be replaced by another provision which comes closest to reflecting the economic significance of this provision. The same shall apply to conditions which contain omissions or require interpretation.

As at: June 2010

