

Conditions of sale and delivery of Metzner Maschinenbau GmbH, Neu-Ulm

I. General

- (1) The following conditions of sale and delivery shall apply, except in individual cases where divergent terms and conditions have been stipulated in writing. All written agreements, which deviate from the following conditions of sale and delivery, shall be given priority and their validity shall not be affected therefrom.
- (2) Upon the acceptance of our offer documents, the following conditions of sale and delivery are deemed to be acknowledged by the customer, irrespective of whether a contract has been concluded or not. This shall apply in particular to **item II(3)** of these conditions of sale and delivery.

II. Offer and conclusion of contract

- (1) All offers are not binding with regard to price, delivery period and delivery options. Any oral agreements or agreements made over the telephone shall be valid, only if the said agreements are confirmed in writing by the contractor.
- (2) The documents appertaining to the offer, such as illustrations, drawings, weight and measurement specifications, are to be considered as approximations only, unless it has been expressly confirmed that these documents are binding.
- (3) We hereby reserve all proprietary rights and copyrights to the cost estimates, drawings and other documents. The aforesaid cost estimates, drawings and other documents may not be made available to third parties without our express permission. Any documents handed over to us by the customer will be made available to third parties, only if the customer has issued its approval in this regard.

III. Scope of delivery

- (1) If the delivery of the contract goods prior to the passing of risk is rendered impossible, the contract shall be rescinded.
- (2) Any claims for damages shall be regarded as legitimate, only if intent or gross negligence is imputable to the user.

IV. Prices

- (1) The prices shall be calculated ex works Neu-Ulm, plus the currently prevailing value-added tax. Packaging, transportation, assembly and initial-operation costs as well as any incidental expenses incurred for customs duty and insurance are not included in the prices.
- (2) If the contractual delivery is effected more than four months after the conclusion of the contract, the contractor shall have the right to charge the actual list price, which is valid on the date of delivery. In the event of any increase in price, the customer shall have the right to rescind the contract within 14 days after the notification of price increase.
- (3) The contractor shall have the right to rectify any price errors and calculation errors, even if these errors are not apparent.

V. Assembly and initial operation

The customer shall provide a specialist who will carry out the assembly and initial operation. The aforesaid specialist shall be provided on request and against an invoice. The invoice will be calculated in accordance with the expenditures incurred.

VI. Payment and default in payment

- (1) In the case of equipment, 50 % of the invoice amount must be paid when the order is placed. For the remaining 50 %, the terms of payment shall be 30 days net, calculated after the invoice date.
 - (2) In the case of payments due for spare parts and accessories, the terms of payment shall be 14 days net, calculated after the invoice date.
- For customer services rendered, the terms of payment shall be 10 days net.
- (3) In the event of failure to comply with the period of time prescribed for payment, an annual interest rate amounting to 3 % above the prevailing discount rate of the Deutsche Bundesbank will be charged. The minimum annual interest rate, however, shall be 7 %.
 - (4) Payments are to be settled in the following order:
1. costs, 2. interest, 3. loan charges, 4. purchase price.
 - (5) The customer shall waive any legal rights of retention as well as any offsetting of counterclaims contested by the contractor.

VII. Delivery period

- (1) The date of delivery shall be specified in the confirmation of order.
- (2) The customer is required to grant a reasonable grace period – starting from the date of receipt of the written notice of default by the customer – in the event that the contractor fails to comply with the stipulated period of delivery. Furthermore, the customer shall be entitled to the assertion of rights arising from the contract only after the expiration of the grace period. The customer may assert damage claims due to default only in the case of intentional default and gross negligence by the contractor. In these cases, the customer shall have the right to claim compensation for default provided that proof of damages incurred by the customer can be furnished and further claims are excluded. For each whole week, the aforesaid compensation shall amount to 0.5 % of the value of the portion of the total delivery, which cannot be reasonably utilized in time as a result of the delay. The maximum compensation, however, shall be limited to 5 %.
- (3) If the forwarding of the finished parts is delayed at the request of the customer, the costs incurred for warehousing will be charged to the customer. These warehousing costs will be charged one month after the notification of readiness for dispatch and shall amount to at least 0.5 % of the invoice amount for each month, which has already commenced. After the fixing of a reasonable time limit, the contractor shall have the right to freely dispose of the delivery item and to supply the customer with another delivery item, which is similar in type and quality.
- (4) Any interruptions in business operations – particularly strikes and lockouts as well as other cases of force majeure – which may occur at the contractor as well as at the contractor's upstream supplier and which are not imputable to the contractor, shall extend the delivery periods accordingly. In these cases, the customer may not derive any right to claim damages. In these cases, the customer shall be entitled to the right of rescission, only if a written reminder for the delivery is sent by the customer after the expiration of the stipulated delivery period, and if the delivery to the customer is not effected within a reasonable grace period after the contractor's receipt of the reminder.

VIII. Passing of risk

The risk for any loss or damage shall lie with the contractor until the time of loading of the contract goods on the vehicle, which will carry out the transport ex works. From this time on, the price risk shall pass to the customer.

This provision shall also apply, if the contractor hires a forwarding agent or if the delivery is effected via rail.

If the delivery is forwarded through employees of the contractor, the price risk shall likewise pass to the customer at the time specified above, unless the customer can furnish proof that the contractor is guilty of any intention or gross negligence which resulted in the loss or damage of goods.

IX. Forwarding and packaging

- (1) The forwarding of goods shall be carried out ex works Neu-Ulm, at the expense and at the risk of the customer. On request of the customer, the contractor will take out a transport insurance policy in return for the reimbursement of pertinent expenses. The quality, quantity and weight of the delivery must be inspected after the receipt of the said delivery.
- (2) The carrier must be immediately notified in writing about any damages which may have occurred.
- (3) The contractor shall calculate the packaging cost at cost price.

X. Default in accepting the delivery of goods

- (1) If, after the expiration of a 10-day grace period granted to the customer, the customer refuses to accept the delivery or expressly declares its intention to reject delivery beforehand, the contractor shall have the right to rescind the contract or to demand compensation for damages due to non-fulfillment.
- (2) If the default in acceptance of delivery lasts longer than a month, the customer will be obligated to pay monthly storage charges amounting to 2 % of the order price without discount. The payment of higher storage charges may be demanded, if corresponding proof can be furnished. With regard to storage, the contractor shall also be entitled to avail of the services of a forwarding agency.
- (3) If the customer fails to prove that damages were not incurred at all or the cost of damages incurred was substantially lower than the lump sum, the contractor shall have the right to demand

25% of the order price (without discount) as compensatory damages for non-fulfillment due to default in acceptance of delivery.

- (4) Moreover, in cases where the amount of damages is proven to be higher – such as in the case of manufacture according to customer specifications – the contractor shall reserve the right to assert a claim for the higher amount of damages.
- (5) If it is physically impossible for the contractor to effect the delivery during the default in acceptance, the customer shall remain obligated to execute counterperformance and the contractor shall not bear the blame for the occurrence of the physical impossibility of performance.

XI. Rescission

- (1) The contractor shall have the right to rescind the contract, if the customer provided incorrect information regarding its personal data or facts, which are contingent on the customer's creditworthiness, or if the customer suspended its payments or if a petition in bankruptcy or a petition for the institution of composition proceedings has been filed in connection with the customer's assets. With regard to the taking back of goods, **item XII** shall apply.
- (2) The customer shall have the right to rescind the contract, if the contractor allows the fruitless expiration of a reasonable grace period granted for the rectification of a defect, which is imputable to the contractor. The reasonable grace period shall not commence until the defect and the obligation of the contractor to assume responsibility for defects have been acknowledged or proven.

XII. Taking back of the delivery item

- (1) If the contractor takes back the delivery item – irrespective of the legal ground – advance payments made will be reimbursed.
 - (2) The customer is required to pay the costs, which are actually incurred by the contractor as a result of the contract.
 - (3) Within the 1st half-year period, the contractor shall be entitled to demand compensation for depreciation, which shall be for the use of the delivery item and which shall amount to 35 % of the order value. Furthermore, the contractor shall also have the right to offset the said amount against the receivables of the customer, if necessary.
- Unless the customer can furnish proof that the amount of depreciation is considerably lower.

XIII. Warranty

With regard to delivery defects – which also include the absence of expressly warranted qualities – the contractor shall be liable according to the following provisions, and any further claims shall be excluded in this case:

- (1) The warranty period is in compliance with statutory regulations and shall be equivalent to two years for newly manufactured articles, and one year for used, reworked articles. If the ordering party is an entrepreneur, a legal person under public law or a special fund under public law, the warranty period shall be equivalent to one year.
- (2) All those parts, which were proven to be unserviceable or whose serviceability was proven to be considerably impaired within 24 months after the initial operation as a result of a circumstance occurring prior to the passing of risk – particularly due to faulty design, inferior construction materials or defective workmanship – are to be repaired or replaced without any charge and in accordance with the reasonably exercised discretion of the contractor. Upon discovery of such defects, a written report must be given to the contractor without undue delay. Any replaced parts shall become the property of the contractor.
- (3) No warranty will be given for damages incurred due to the following causes:
Inappropriate or improper use; defective assembly or faulty starting by the customer or by a third party; incorrect or negligent handling, especially excessive loading; inappropriate equipment; alternative materials; defective construction work; unclear electric-power system; electromechanical or electronic influences, provided that these are not attributable to any fault of the contractor; consequential damages resulting from the neglect of the duty of supervision.
- (4) With regard to the performance of all repairs and spare-parts deliveries, which appear necessary to the contractor according to reasonable discretion, the customer is required to give the needed time and opportunity following previous consultation with the contractor, otherwise the contractor shall be discharged from the liability for defects. Only in urgent cases involving danger to operational safety (in such cases, the contractor must be immediately notified), or in those cases in which the contractor is in default with the removal of the defect, shall the customer have the right to remove the defect or to appoint a third party to remove the defect, and to demand a reasonable cost reimbursement from the contractor.
- (5) From the sum total of the direct costs incurred through the repair work or substitute delivery, the contractor shall pay the cost of the spare part, the forwarding charges, and any reasonable costs for dismantling and installation – provided that the complaint turns out to be legitimate – as well as the cost of any necessary hiring of the contractor's assemblers and auxiliary staff, if this could be reasonably demanded in accordance with the circumstances of the individual case. For all other expenditures, the customer shall assume the costs.
- (6) The justification of the warranty claim for defects shall not be recognized through the services rendered by the contractor for the rectification of defects, unless such justification is expressly stipulated. Any existing claims for damages shall be restricted to intent and gross negligence, unless these claims are based on a contractual warranty.
- (7) The contractor shall have the right to refuse the removal of defects, if the customer fails to perform its obligations.
- (8) If improper alterations or repairs are carried out by the customer or by a third party without the prior consent of the contractor, the liability for the resulting consequences shall be annulled.
- (9) The warranted quality of the delivery item shall require a corresponding written labeling in each case.

XIV. Reservation of ownership

- (1) The contractor shall retain the title to the delivered equipment, spare parts and expendable materials until the full payment of the purchase price.
- (2) In the case of any processing or alteration, the contractor shall always be regarded as the manufacturer (§ 950 of the BGB or German Civil Code). If the contractor's right of ownership expires through combination, the customer's ownership shall pass to the contractor and such passing of ownership shall be calculated in proportion to the invoice value of the delivered merchandise.
- (3) The merchandise, which was delivered with a reservation, may be sold by the customer in the ordinary course of business. Pledges or chattel mortgages are not permissible. In order to be on the safe side, any claims arising from resale or from another legal ground relating to the merchandise delivered with a reservation, shall be immediately assigned by the customer to the contractor. The contractor shall grant the customer revocable authorization to collect the assigned claims in its own name and for its own account.
- (4) In the event of any third-party access to the merchandise delivered with a reservation, the customer shall point out the right of ownership of the contractor and notify the contractor without undue delay. Costs and damages must be paid by the customer.
- (5) On request of the customer, the contractor shall release the aforementioned securities provided that their value exceeds the value of the claims by more than 25 %.

XV. Place of fulfillment and jurisdiction

The place of fulfillment for all reciprocal claims is Neu-Ulm. The contract is subject to the law of the Federal Republic of Germany. The place of jurisdiction for both contracting parties shall be Neu-Ulm. If the contractor appears as a plaintiff, the contractor shall have the right to sue in the court having jurisdiction over the customer.

XVI. Severability clause

Should any of the preceding clauses become invalid, the validity of the remaining provisions shall not be affected. Statutory regulation shall then supersede the invalid clauses. In the absence of any statutory regulation, the contracting parties shall be obligated to stipulate a provision, which comes closest to the commercial purpose intended by the invalid clause.

