

**General Terms and Conditions of Sale**  
**of**

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**§ 1 Scope, Form**

- (1) These General Terms and Conditions of Sale (hereinafter: “Terms and Conditions of Sale”) apply to all our business relationships with our customers (“Buyer”). These Terms and Conditions of Sale only apply if the Buyer is an entrepreneur (§ 14 of the German Civil Code (BGB)), a legal entity under public law or a special fund under public law.
- (2) These Terms and Conditions of Sale apply in particular to contracts for the sale and/or delivery of movable goods as well as services (“Goods”), irrespective of whether we manufacture the Goods ourselves or purchase them from suppliers (§§ 433, 650 German Civil Code).
- (3) Our Terms and Conditions of Sale apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the Buyer only become part of the contract if and to the extent that we have expressly agreed to their validity. This requirement of consent shall apply in any case, for example even if we carry out the delivery to the Buyer without reservation in the knowledge of the Buyer's general terms and conditions.
- (4) Individual agreements made with the Buyer in individual cases (including ancillary agreements, supplements, changes and amendments) take precedence over these Terms and Conditions of Sale.

Subject to proof to the contrary, a written contract or our written confirmation shall be authoritative for the content of such agreements.

(5) Legally relevant declarations and notifications by the Buyer with regard to the contract (e.g. setting a deadline, notification of defects, withdrawal or reduction) must be made in writing (§ 126 German Civil Code) or text form (§ 126b German Civil Code). Statutory formal requirements and further evidence, in particular in case of doubt about the legitimacy of the declarant, shall remain unaffected.

(6) References to the applicability of statutory provisions shall be for clarification purposes only. Therefore, even without such clarification, the statutory provisions shall apply unless they are directly amended or expressly excluded in these Terms and Conditions of Sale.

## **§ 2 Conclusion of Contract, Termination**

(1) Our offers are subject to change and are non-binding. This also applies if we have provided the Buyer with catalogues, technical documentation (e.g. drawings, plans, calculations, references to DIN standards), other product descriptions or documents – also in electronic form – to which we reserve property rights and copyrights.

(2) The order of the Goods by the Buyer shall be deemed a binding offer of contract. Unless otherwise stated in the order, we are entitled to accept this contractual offer within 4 weeks of its receipt by us.

(3) Acceptance may be declared either in text form (e.g. by order confirmation) or by delivery of the Goods to the Buyer.

(4) The Buyer's right of termination under § 649 Sentence 1 of the German Civil Code is excluded.

## **§ 3 Delivery Period and Delay in Delivery**

(1) The delivery period shall be agreed upon individually or stated by us in the order confirmation upon acceptance of the order.

(2) Deadlines shall be deemed to have been met upon notification of readiness for dispatch if the Goods cannot be dispatched on time through no fault of our own.

(3) If the Buyer fails to fulfil the Buyer's obligation to cooperate or to perform in advance (in particular the provision of any necessary documents and information such as information on the setting of the machine to be delivered, permits, certificates, profiles to be processed, profile drawings and the sending of workpieces necessary for the preparation of the order; advance payment and part payments; releases) or fails to do so in good time, the delivery periods agreed upon for us shall be extended appropriately, but at least by the period of the delay on the part of the Buyer plus a period of two weeks.

(4) If we are unable to meet any binding delivery deadlines for reasons for which we are not responsible (non-availability of performance), we shall inform the Buyer of this without delay and at the same time notify the Buyer of the expected new delivery deadline. If the service is also not available within the new delivery period, we are entitled to withdraw from the contract in whole or in part; we shall immediately refund any consideration already paid by the Buyer. A case of non-availability of the performance in this sense includes, in particular, the non-timely delivery by our suppliers if we have concluded a congruent covering transaction, neither we nor our supplier are at fault, or we are not responsible for procurement in the individual case.

(5) The occurrence of our delay in delivery shall be determined in accordance with the statutory provisions. In any case, however, a reminder by the Buyer is required.

(6) The rights of the Buyer pursuant to § 8 of these Terms and Conditions of Sale and our statutory rights, in particular in the event of an exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of performance and/or subsequent performance), shall remain unaffected.

#### **§ 4 Delivery, Transfer of Risk, Acceptance, Default of Acceptance**

(1) Delivery is ex warehouse in Neustadt/Wied (Germany), which is also the place of performance for the delivery and any subsequent performance. At the request and expense of the Buyer, the Goods shall be shipped to another destination at the expense of the Buyer (sale by delivery to a place other than the place of performance). Unless otherwise agreed upon, we are entitled to determine the type of shipment (in particular transport company, shipping route, packaging) ourselves.

(2) The risk of accidental loss and accidental deterioration of the Goods shall pass to the Buyer at the latest upon handover. In the case of sale by delivery to a place other than the place of performance, however, the risk of accidental loss and accidental deterioration of the Goods as well as the risk of delay shall pass upon delivery of the Goods to the forwarding agent, the carrier or the person or institution otherwise designated to carry out the shipment. Insofar as acceptance has been agreed, this shall be decisive for the transfer of risk. In all other respects, the statutory provisions of the law on contracts for work and services shall also apply mutatis mutandis to an agreed acceptance. Handover or acceptance is equivalent to acceptance if the Buyer is in default of acceptance.

(3) If the Buyer is in default of acceptance, fails to cooperate or if our delivery is delayed for other reasons for which the Buyer is responsible, we shall be entitled to demand compensation for the resulting damages including additional expenses (e.g. storage costs). For this purpose, we shall charge a lump-sum compensation of 0.5% of the net value of the Goods per commenced calendar month, starting with the delivery deadline or – in the absence of a delivery deadline – with the notification that the Goods are ready for dispatch, but not exceeding 10% of the net value of the Goods. Proof of higher damages and our statutory claims (in particular compensation for additional expenses, reasonable compensation,

termination) shall remain unaffected; however, the lump sum shall be offset against further monetary claims. The Buyer may prove that we have incurred no damage at all or significantly less damage than the aforementioned lump sum.

(4) If acceptance by the Buyer has been agreed, the Buyer shall carry out the acceptance by signing an acceptance protocol, unless the Goods cannot be accepted. However, the Goods shall be deemed to have been accepted in each case;

- a) if the Buyer does not comply with our request for acceptance or for signing the acceptance protocol within 10 days, although the Goods are ready for acceptance and we have pointed out to the Buyer that the failure to accept the Goods will have the effect of acceptance without further declaration; or
- b) if the Goods are used in accordance with their purpose after a declaration of release by us without formal acceptance by the Buyer beyond a test period of two weeks; or
- c) if the Goods are shipped to a place other than the originally agreed-upon place of installation at the request of the Buyer.

Minor defects that do not impair the use of the goods for the agreed-upon purpose or the purpose jointly assumed in the contract do not allow for the refusal of acceptance.

(5) We are entitled to make partial deliveries if the partial delivery is usable for the Buyer within the scope of the contractual purpose, the delivery of the remaining ordered goods is ensured and the Buyer does not incur any significant additional expenses or costs as a result (unless we agree to bear these costs).

## **§ 5 Prices and Terms of Payment**

(1) Unless otherwise agreed upon in individual cases, our current prices at the time of conclusion of the contract shall apply, ex warehouse, plus statutory VAT. Payment is to always be made in euros.

(2) In the case of a sale by delivery to a place other than the place of performance (§ 4 Para. 1), the Buyer shall bear the transport costs ex warehouse and the costs of any transport insurance requested by the Buyer. Any customs duties, fees, taxes and other public charges shall be borne by the Buyer.

(3) The purchase price is due and payable upon invoicing and delivery or acceptance of the Goods. However, we are entitled, at any time, within the framework of an ongoing business relationship, to make a delivery in whole or in part only against advance payment. We shall declare any corresponding reservation at the latest with the order confirmation.

(4) Upon expiry of the aforementioned payment deadline, the Buyer shall be in default. During the period of default, the purchase price shall bear interest at the applicable statutory default interest rate. We

reserve the right to assert further damage caused by delay. With respect to merchants, our claim to the commercial due date interest (§ 353 German Commercial Code (HGB)) remains unaffected.

(5) The Buyer shall only be entitled to rights of set-off or retention insofar as the Buyer's claim has been legally established or is undisputed. In the event of defects in the delivery, the Buyer's counter rights shall remain unaffected, in particular pursuant to § 7 Para. 6 Sent. 2 of these Terms and Conditions of Sale.

(6) If it becomes apparent after the conclusion of the contract (e.g. by filing for insolvency proceedings) that our claim to the purchase price is jeopardised by the Buyer's inability to pay, we shall be entitled to refuse performance in accordance with the statutory provisions and – if necessary after setting a deadline – to withdraw from the contract (§ 321 German Civil Code). In the case of contracts for the manufacture of unique items (custom-made products), we may declare rescission immediately; the statutory provisions on the dispensability of setting a deadline remain unaffected.

(7) The agreed-upon prices shall be calculated by us taking into account the wage, material and energy costs applicable at the time of conclusion of the contract. If such costs increase within a period of 4 months after order confirmation until the agreed time for completion of the order, we shall be entitled to demand a proportionately increased price as consideration as part of the percentage share of these costs to the agreed price.

(8) In deviation from Para. 3, payment for the delivery of items to be manufactured on behalf of the Buyer with a net order value of €10,000.00 or more shall be made as follows, unless otherwise agreed upon individually:

- 30% of the invoice amount within 8 days after receipt of the order confirmation by the Buyer;
- 30% of the invoice amount within 30 days after receipt of the order confirmation by the Buyer;
- 30% of the invoice amount within 8 days after acceptance;
- 10% of the invoice amount within 8 days after commissioning, but no later than 30 days after receipt of the final invoice by the Buyer.

The invoice value shall be determined on the basis of the value of the individual order. No aggregation of several individual orders shall take place, notwithstanding any possible inclusion in an invoice document.

## **§ 6 Retention of Title**

(1) We retain the title to the Goods sold until full payment of all our current and future claims arising from the purchase contract and an ongoing business relationship (secured claims).

(2) The Goods subject to retention of title may neither be pledged to third parties nor assigned as security before full payment of the secured claims. The Buyer shall inform us immediately in writing if an application is made to open insolvency proceedings or if third parties (e.g. seizures) have access to the goods belonging to us.

(3) In the event of conduct by the Buyer that is in breach of contract, in particular non-payment of the purchase price due, we may withdraw from the contract in accordance with the statutory provisions or/and demand the return of the Goods on the basis of this retention of title. The demand for return does not at the same time include the declaration of withdrawal; we are rather entitled to demand only the return of the Goods and to reserve the right of withdrawal. If the Buyer does not pay the purchase price due, we may only assert these rights if we have previously set the Buyer a reasonable deadline for payment without success or if setting such a deadline is legally superfluous according to the statutory provisions.

(4) Until revoked in accordance with (c) below, the Buyer is authorised to resell and/or process the Goods subject to retention of title in the ordinary course of business. In this case, the following provisions shall apply in addition.

- a) The retention of title extends to the products resulting from the processing, mixing or combining of our Goods at their full value, whereby we are deemed to be the manufacturer. If, in the event of processing, mixing or combining with goods of third parties, whose right of ownership remains, we shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined goods. In all other respects, the same shall apply to the resulting product as to the Goods delivered under retention of title.
- b) The Buyer hereby assigns to us by way of security the claims against third parties arising from the resale of the Goods or the product in total or in the amount of our possible co-ownership share in accordance with the above Paragraph. We accept this assignment. The obligations of the Buyer mentioned in Para. 2 also apply with regard to the assigned claims.
- c) The Buyer remains authorised to collect the claim in addition to us. We undertake not to collect the claim as long as the Buyer fulfils the Buyer's payment obligations towards us, there is no deficiency in the Buyer's ability to pay and we do not assert the retention of title by exercising a right pursuant to Para. 3. If this is the case, however, we may demand that the Buyer informs us of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment. Furthermore, in this case we are entitled to revoke the Buyer's authority to further sell and process the Goods subject to retention of title.
- d) If the realisable value of the securities exceeds our claims by more than 10%, we shall release securities of our choice at the Buyer's request.

## § 7 Claims for Defects by the Buyer

(1) The statutory provisions shall apply to the rights of the Buyer in the event of material defects and defects of title (including incorrect and under delivery as well as improper assembly or defective assembly instructions), unless otherwise stipulated below. In all cases, the special statutory provisions remain unaffected in the case of final delivery of the unprocessed Goods to a consumer, even if the consumer has processed them further (supplier recourse pursuant to § 478 German Civil Code). Claims arising from the recourse of the supplier are excluded if the defective Goods have been further processed by the Buyer or another entrepreneur, e.g. by installation in another product.

(2) The basis of our liability for defects is above all the agreement reached concerning the quality of the Goods. Insofar as the quality has not been agreed upon, it is to be assessed according to the statutory regulations on whether a defect is present or not (§ 434 Para. 1 Sents. 2 and 3 German Civil Code). However, we accept no liability for public statements made by the manufacturer or other third parties (e.g. advertising statements) to which the Buyer has not drawn our attention as being decisive for the Buyer's purchase. All information about our products, in particular the illustrations, drawings, weights, dimensions and performance specifications contained in our offers and advertising leaflets, are to be regarded as approximate average values which may deviate from practical values, provided that the usability of the Goods assumed in the contract is not affected by the deviation. Unless limits for permissible deviations are expressly stipulated in the order confirmation and designated as such, deviations that are customary in the industry or that are reasonable for the Buyer (manufacturing and performance tolerances) are permissible.

(4) The Buyer's claims for defects presuppose that the Buyer has fulfilled the Buyer's statutory obligations to inspect and give notice of defects (§§ 377, 381 German Commercial Code). In the case of building materials and other goods intended for installation or other further processing, an inspection must in any case be carried out immediately before processing. If a defect becomes apparent during delivery, inspection or at any later time, we must be notified of this in writing without delay. In any case, obvious defects must be reported in writing within 10 working days from delivery and defects not recognisable during inspection within the same period from discovery. If the Buyer fails to properly inspect the Goods and/or give notice of defects, our liability for the defect not reported or not reported in time or not reported properly shall be excluded in accordance with the statutory provisions.

(5) If the delivered item is defective, we may initially choose whether to provide subsequent performance by remedying the defect (rectification) or by delivering a defect-free item (replacement). Our right to refuse subsequent performance under the statutory conditions remains unaffected.

(6) We are entitled to make the subsequent performance owed dependent on the Buyer paying the purchase price due. However, the Buyer shall be entitled to retain a reasonable part of the purchase price in relation to the defect.

(7) The Buyer shall give us the time and opportunity required for the subsequent performance owed, in particular to hand over the Goods complained about for inspection purposes. In the event of a replacement delivery, the Buyer shall return the defective item to us in accordance with the statutory provisions. Subsequent performance does not include the removal of the defective item or the re-installation if we were not originally obliged to install it.

(8) We shall bear or reimburse the expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labour and material costs and, if applicable, removal and installation costs, in accordance with the statutory provisions if a defect is actually present. Otherwise, we may demand reimbursement from the Buyer of the costs incurred as a result of the unjustified request to remedy the defect (in particular inspection and transport costs), unless the lack of defectiveness was not recognisable to the Buyer.

(9) In urgent cases, e.g. if operational safety is endangered or to prevent disproportionate damage, the Buyer shall have the right to remedy the defect alone and to demand reimbursement from us of the expenses objectively necessary for this purpose. We must be informed immediately of any such self-execution, if possible in advance. The right of self-performance does not exist if we would be entitled to refuse corresponding subsequent performance according to the statutory provisions.

(10) If the subsequent performance has failed or a reasonable deadline to be set by the Buyer for the subsequent performance has expired unsuccessfully or is legally superfluous according to the statutory provisions, the Buyer may withdraw from the purchase contract or reduce the purchase price. In the case of an insignificant defect, however, there is no right of withdrawal.

(11) Claims of the Buyer for damages or reimbursement of futile expenses shall also exist in the case of defects only in accordance with § 8 and are otherwise excluded.

(12) Any claims for defects on the part of the Buyer shall be excluded in the case of delivery of used goods; this shall not apply if we have fraudulently concealed the defect or have assumed a guarantee for the quality of the Goods.

### **§ 8 Other Liability**

(1) Insofar as nothing to the contrary arises from these Terms and Conditions of Sale, including the following provisions, we are liable in accordance with the statutory provisions in the event of a breach of contractual and non-contractual obligations.

(2) We are liable for damages – irrespective of the legal grounds – within the scope of fault-based liability in the event of intent and gross negligence. In the event of simple negligence, we are only liable, subject to statutory limitations of liability (e.g. care in own affairs; insignificant breach of duty), for:

- a) damages arising from injury to life, limb or health; and



- b) damages arising from the breach of an essential contractual obligation (obligation the fulfilment of which is a prerequisite for the proper performance of the contract and the observance of which the contractual partner regularly relies on and may rely on); in this case, however, our liability is limited to compensation for the foreseeable, typically occurring damage.

(3) The limitations of liability resulting from Para. 2 shall also apply in the event of breaches of duty by or in favour of persons for whose fault we are responsible in accordance with statutory provisions. They do not apply insofar as we have fraudulently concealed a defect or have assumed a guarantee for the quality of the Goods and for claims of the Buyer under the Product Liability Act.

(4) Due to a breach of duty that does not arise from a defect, the Buyer may only withdraw from or terminate the contract if we are responsible for the breach of duty. A free right of termination of the Buyer (in particular according to §§ 650, 648 German Civil Code) is excluded. In all other respects, the statutory requirements and legal consequences shall apply.

#### **§ 9 Limitation Period**

(1) Notwithstanding § 438 Para. 1 No. 3 of the German Civil Code, the general limitation period for claims arising from material defects and defects of title shall be one year from delivery. Insofar as acceptance has been agreed upon, the limitation period shall commence upon acceptance.

(2) If, however, the Goods are a building or an object that has been used for a building in accordance with its customary use and has caused the building's defectiveness (building material), the limitation period shall be 5 years from delivery in accordance with the statutory provision (§ 438 Para. 1 No. 2 German Civil Code). Other special statutory provisions on limitation (in particular § 438 Para. 1 No. 1, Para. 3, §§ 444, 445b German Civil Code) shall also remain unaffected.

(3) The above limitation periods arising from the law on sales also apply to contractual and non-contractual claims for damages by the Buyer based on a defect of the Goods, unless the application of the regular statutory limitation period (§§ 195, 199 German Civil Code) would lead to a shorter limitation period in the individual case. However, claims for damages by the Buyer pursuant to § 8 Para. 2 Sent. 1 and Sent. 2(a) as well as pursuant to the Product Liability Act become statute-barred exclusively in accordance with the statutory limitation periods.

#### **§ 10 Production according to the Buyer's Instructions**

(1) In the case of production being carried out according to drawings, samples and other instructions of the Buyer, we do not assume any warranty and liability for the functional capability of the product and for other defects, insofar as these circumstances are based on the Buyer's instructions.

(2) In the cases of Paragraph 1, the Buyer shall indemnify us against any claims of third parties, including claims under product liability law, against us for damages caused by the Goods, unless we have caused the damage intentionally or by gross negligence.

(3) In the cases of Paragraph 1, the Buyer shall warrant to us that the production and delivery of the Goods produced according to the Buyer's instructions do not infringe any third-party property rights. In the event that industrial property rights are asserted against us, we shall be entitled to withdraw from the contract after consultation with the buyer, without any legal examination of the possible claims of third parties, unless the third party withdraws the assertion of the industrial property rights within 8 days by written declaration to us. The Buyer shall compensate us for any damages incurred as a result of the assertion of the property rights and shall indemnify us upon request. In the event of withdrawal, the work performed by us to date is to be remunerated. Further rights under the statutory provisions remain unaffected.

#### **§ 11 Information, Advice**

(1) Information and advice regarding our products shall be given on the basis of our experience to date. The values given here, in particular the performance data, are average values determined in tests under standard laboratory conditions. We cannot accept liability for compliance with the values in practical operation and realisation of intended application possibilities, unless these are expressly agreed upon. The Buyer is advised that the implementation is at the Buyer's own risk.

(2) Due to the nature of telephone support communication and the tight time requirements, as well as the often casual nature of the requested free assistance, our staff are not able to carefully coordinate tips and suggested solutions with regard to the conceivable complex requirements of a machine. The free support service, without a formal order, in the form of tips, hints and the provision of programming aids and small programmes is therefore provided without the assumption of any liability - except in the case of intent.

(3) The provisions of this Paragraph shall not apply insofar as a paid contract for the provision of advisory and information services has been concluded or in cases in which we are legally obliged to provide services free of charge.

#### **§ 12 Choice of Law and Place of Jurisdiction**

(1) These Terms and Conditions of Sale and the contractual relationship between us and the Buyer are governed by the laws of the Federal Republic of Germany to the exclusion of international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods.

(2) If the Buyer is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive – also international – place of jurisdiction for all disputes arising directly or indirectly out of the contractual relationship is our registered office in Neustadt/Wied, Germany.

Stürtz Maschinenbau GmbH