

Terms and Conditions for the Sale of Machines and Machine Spare Parts to Business Customers

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MELZER maschinenbau GmbH

1. Validity

- 1.1 The present Terms and Conditions shall apply only to supplies of machines and machine spare parts ("Deliveries") which are made on the basis of a contract concluded between us and a Business Customer ("Customer").
- 1.2 Any diverging terms and conditions shall not apply unless we have expressly agreed to them in writing.

2. Offers

- 2.1 The description of the quality of our Deliveries is exclusively and conclusively defined in the respective Technical Specification ("TS").
- 2.2 We reserve all ownership and intellectual property rights in illustrations, drawings, plans and construction or engineering documents, etc. relating to the offer.
- 2.3 Any pre-contractual services during the offer stage such as tools, working equipment etc. shall be billed for, even where no contract is subsequently entered into.
- 2.4 Our offers shall be binding and firm for 90 calendar days from the date of the offer, in case no offer validity is indicated in the offer.

3. Terms of Delivery/Transfer of Risk

- 3.1 Prices shall be Ex Works MELZER according to Incoterms 2000 ("Place of Delivery"), plus packaging.
- 3.2 Prices are net prices in EUR, plus the current sales tax in force at the time of Delivery without further deductions.
- 3.3 For Deliveries less than EUR 35.00 net, we charge a flat rate of EUR 35.00 net.
- 3.4 Partial Deliveries shall be permissible where they can reasonably be expected of the Customer.
- 3.5 The risk shall transfer to the Customer at the Place of Delivery. This shall apply to free Deliveries as well as if a Delivery is dispatched or collected.

4. MELZER's Right to make its own Deliveries

In the event that the contractually agreed Delivery is not available because we have not received deliveries from our own suppliers or our delivery stock is depleted, we shall be entitled to make a Delivery which is equivalent in quality and price to the contractually agreed Delivery. If this is not possible, we may withdraw from the Contract.

5. Terms of Payment

- 5.1 Invoices shall be payable immediately and without any deduction, subject to the terms and conditions of pay-

ment contained in the respective offer. Where the offer does not contain any terms of payment, the following shall apply: 40% down payment upon receipt of the order confirmation 60% once the Customer has been notified that the Deliveries are ready for dispatch.

- 5.2 Invoices for spare parts shall be payable in full upon receipt.

- 5.3 The Customer may only set off those claims which are undisputed or have been finally determined in a legally binding manner.

6. Delivery Dates

- 6.1 Observance of the stipulated time for Delivery is conditional on the timely receipt of all documents, necessary permits and approvals, especially of plans to be provided by the Customer as well as fulfilment of the agreed terms of payment and other obligations by the Customer. Unless these conditions are fulfilled on time, the time for Delivery shall be extended accordingly; this shall not apply if we are responsible for the delay.

- 6.2 If non-observance of the time for Delivery is due to force majeure such as mobilization, war, riot or similar events e.g. strike or lock-out, the time limits shall be extended appropriately.

- 6.3 The Seller assumes no liability for delivery delays arising from export restrictions or if delivery is not at all possible due to said export restrictions. If, at the conclusion of contract, delivery cannot be carried out as specified in the contract, the Seller can withdraw at any point from the contract. The Seller is not obliged to pay compensation or damages in this case.

- 6.4 In the event that we are responsible for a delay of the Deliveries, and provided that the Customer can establish credibly that he has suffered a loss for such delay, the Customer may claim agreed damages of 0.5% for every completed calendar week of delay but in no event shall the aggregate of such damages exceed a total of 5% of the net price for that part of the Deliveries which because of the delay could not be put to the intended use in terms of time or contract by the Customer.

- 6.5 Claims by the Customer for damages due to a delay of Delivery as well as claims for damages for non-performance which exceed the limits specified in 6.3 shall be excluded in all cases of delayed Delivery even after expiry of the time limit for Delivery fixed by the Customer. This exclusion shall not apply in cases of wilful misconduct or gross negligence or bodily injury where liability is mandatory.

6.6 The Customer shall only be entitled to withdraw from the Contract to the extent that we are solely liable for the delay in Delivery and the Customer has set us a time limit within which to perform the Delivery and states that it will cease to accept the Delivery after expiry of the time limit and such time limit has expired. This shall not imply a change in the burden of proof to the detriment of the Customer.

6.7 The Customer shall upon request within a reasonable time limit state whether it shall withdraw from the Contract due to the Delivery being delayed or insist on a Delivery.

7. Retention of Title

7.1 The items delivered ("Secured Goods") shall remain our property until each and every claim against the Customer to which we are entitled under this business relationship has been duly satisfied. If the value of all our security interests against the Customer exceeds the value of all our secured claims by more than 20%, we shall release a corresponding part of the security rights at the Customer's request.

7.2 For the duration of the retention of title, the Customer is prohibited from giving the Secured Goods in pledge or as security. In case of a seizure of the Secured Goods or other acts or interventions by third parties relating to the Secured Goods, we shall be immediately informed thereof in writing by the Customer.

7.3 The re-sale of the Secured Goods by the Customer in the ordinary course of business shall only be permissible to clients on condition that the Customer receives payment from his client or retains title so that the property in the Secured Goods is transferred to his client only after fulfilment of the client's obligation to pay.

7.4 Our ownership in the Secured Goods shall not be revoked during the processing and production of the product at the Customer's premises for which the Secured Goods are being used ("End Product"). Our ownership in the Secured Goods shall continue in the End Product; we shall acquire joint ownership in the End Product in the same share as the value of the Secured Goods in proportion to the value of the End Product.

7.5 Upon conclusion of the Contract, the Customer shall assign the claims owed to him from the resale or processing of the Secured Goods against his clients in the same amount as our claim against the Customer for the Delivery. Our duty to release under 7.1 shall remain unaffected.

7.6 In the event that the Customer is in breach of an obligation, in particular, a default of payment, the following shall apply:

7.6.1 Following the expiry of a reasonable time limit within which the Customer must rectify the breach, we are entitled to withdraw from the Contract and to take back the Secured

Goods; the Customer is obliged to return the Secured Goods to us. The legal rules which dispense of the requirement to set a deadline shall remain unaffected.

7.6.2 The enforcement of a retention of title and the taking back of the Secured Goods associated therewith does not necessitate a withdrawal from this Contract by us; the afore-mentioned actions or seizure of the Secured Goods shall not constitute a withdrawal from the Contract by us, unless expressly stated by us.

8. Material Defects

Our liability for material defects is conclusively defined in the following provisions:

8.1 The quality of the Deliveries is defined conclusively in the respective TS for the individual delivery. We shall not be liable for material defects relating to qualities not specifically mentioned in the TS.

8.2 In case of Deliveries which do not contain the quality listed in the respective TS ("Material Defect") at the time of transfer of risk, we shall, at our option, either repair or re-deliver at no charge ("Subsequent Performance").

8.3 No new limitation period (8.4) shall commence as a result of Subsequent Performance.

8.4 Claims for material defects shall expire in twelve months. This shall not apply to the extent that §§ 438 para. 1 No. 2, 479 para. 1 and 634a para 1 No. 2 of the German Civil Code prescribe longer time periods or in case of bodily injury, wilful misconduct, a grossly negligent breach of duty by us or fraudulent concealment of a defect. The legal rules relating to suspension of expiration of prescription, suspension or re-commencement of the time limits shall remain unaffected.

8.5 The Customer shall give us notice of a defect in writing without undue delay.

8.6 If we shall not be given adequate time and opportunity to carry out Subsequent Performance, we shall have no liability for the material defect.

8.7 In the event that Subsequent Performance fails, the Customer can – without prejudice to other claims for damages (12.) – withdraw from the Contract or reduce the remuneration.

8.8 Claims for defects shall not exist in the event of an insignificant deviation from the agreed quality, insignificant interference with use, natural wear and tear or damages which arose after transfer of risk as a result of faulty or negligent handling, excessive strain, unsuitable production facilities or operating resources, or particular external influences which are not assumed under the Contract.

8.9 Claims made by the Customer for necessary costs such as transport, route, labour and material costs incurred for the purposes of Subsequent Performance, shall be excluded to the extent that the expenditure has increased due to the Delivery being subsequently made to a place other than the Place of Delivery.

8.10 The Customer shall only have a right of recourse against us if the Customer has not entered into a contract with its client which extends beyond the legal claims for defects. For the scope of a claim for recourse by the Customer against us pursuant to § 478 para. 2 of the German Civil Code, 8.8 shall apply accordingly.

8.11 Claims by the Customer against us for a material defect which are more extensive or different to those claims set out in 8. are excluded. 12 shall apply to all other claims for damages.

9. Intellectual Property Rights, Other Defects of Title

9.1 Unless otherwise agreed, Deliveries made by us in the Federal Republic of Germany shall be free from intellectual property rights and copyright of third parties ("Intellectual Property Rights"). If a third party asserts legitimate claims against the Customer due to an infringement of an Intellectual Property Right by the Deliveries furnished by us and used in conformity with the Contract, we shall be liable to the Customer within the stipulated time limit in 8.4 as follows:

9.1.1 At our own option and expense, we shall either obtain a right to use the Deliveries, modify the Deliveries so as not to infringe Intellectual Property Rights or replace the Deliveries. If this is not possible for us on acceptable terms, the Customer shall have a right to withdraw from the Contract or reduce the price. The provisions in 8.6 and 8.10 shall apply accordingly.

9.1.2 The fulfilment of the aforesaid obligations shall be subject to the condition that the Customer immediately notifies us in writing of the claims asserted by the third party, that he does not acknowledge an infringement and that all countermeasures and settlement negotiations are reserved to us. If the Customer stops using the Deliveries to reduce the damage or for other important reasons, he shall make it clear to the third party that the suspended use does not mean acknowledgement of an infringement of Intellectual Property Rights.

9.2 Claims of the Customer shall be excluded if he is liable for the breach of the Intellectual Property Rights.

9.3 Claims of the Customer shall also be excluded if the infringement of Intellectual Property Rights was caused by specific demands of the Customer, by a use of the Deliveries not foreseeable by us or by the Deliveries being altered by the Customer or being used together with products not provided by us.

9.4 The provision in 8. shall apply to any other defects of title.

9.5 Claims by the Customer against us; in particular for damages, due to a defect of title which is more extensive or different to those set out in 9. shall be excluded. 12. shall apply accordingly to claims for damages.

10. Obligations of the Customer

The Customer shall incur liability that his supplies to and their use by us – irrespective of the data medium – do not infringe the Intellectual Property Rights of third parties. The Customer shall hold us harmless from all corresponding claims of third parties.

11. Impossibility, Adjustment of the Contract

11.1 If it is impossible to make the Delivery, the Customer shall be entitled to claim damages unless we are not responsible for the impossibility. The Customer's claim for damages, however, shall be limited to 10% of the value of that part of the Delivery which owing to the impossibility cannot be put to the intended use by the Customer. This shall not apply where in cases of wilful misconduct, gross negligence or initial impossibility or due to bodily injury, there is a legally binding liability; this shall not imply a change in the burden of proof to the detriment of the Customer. The Customer's right to terminate the Contract shall remain unaffected.

11.2 Where unforeseeable events of force majeure (6.2) substantially change the economic importance or the content of the Deliveries or have a considerable effect on MELZER's business, the Contract shall be adapted accordingly with due regard to the principle of good faith. Where this is not economically reasonable, we have the right to withdraw from the Contract. If we make use of this right of termination we shall notify the Customer in writing immediately after becoming aware of the significance of the event even where at first an extension of the Delivery time had been agreed with the Customer.

12. Other Claims for Damages

12.1.1 Unless otherwise expressly agreed, any claims for damages of the Customer shall be excluded regardless of whether they are based on duties arising under the obligatory relationship or tort.

12.1.2 We provide application guidelines and advice in good faith and without any liability to Customer. The Customer shall not be released from his obligation to examine the intended use of the Deliveries at his sole responsibility. This shall apply even if we are aware of the Customer's application of use.

12.1.3 This exclusion shall not apply where e.g. under the Product Liability Act or in cases of wilful misconduct, gross negligence, bodily injury or a breach of substantial contractual obligations, there is a legally binding liability.

12.1.4 Our liability for damages arising from the fundamental non-performance of contractual obligations of the Contract shall be limited to foreseeable damages normally covered by the Contract except in cases of wilful misconduct, gross negligence or bodily injury.

12.2 Insofar as our liability according to 12. is excluded or restricted, this shall also apply to the personal liability of our employees, personnel, staff and vicarious agents, not, however, to our legally authorized representatives and senior management.

12.3 To the extent that the customer is entitled to claim for damages according to 12. these shall elapse with expiry of the applicable time limit pursuant to 8.4 for material defects. In the event of claims for wilful misconduct and damages under the Product Liability Act, the legal time limits shall apply.

12.4 The burden of proof shall remain unaffected by the provisions in 12.

13. Resales

The Seller draws attention to the fact that export conditions regarding use and application can be applicable in the event of a resale. Furthermore, US components (product, software, technology) may be contained in the products supplied by the Seller, which may subsequently demand compliance with US American regulations. The Purchaser has an obligation to the Seller to ensure compliance with pertinent export regulations in the event of re-exporting.

14. Software Usage

14.1 Insofar as the Deliveries comprise software, the Customer shall be granted a non-exclusive right to use the respective software including its documentation for the use of the Deliveries.

14.2 The Customer may only copy, edit or translate the software or convert its object code to source code to the extent as stipulated in §§ 69a et seqq. of the German Copyright Act. The Customer shall neither remove our manufacturer's details, in particular, our copyright note, nor shall it change them without our explicit prior written approval.

14.3 All other rights concerning the software and its documentation including copies thereof shall remain with us. Sublicensing by the Customer shall not be permissible.

15. Confidentiality

15.1 The parties shall not without the written consent of the other party pass documents, knowledge and information, tools, molds, samples, models, profiles, drawings, data standard sheets, manuscripts and other technical documentation – irrespective of the data medium – ("Information") to third parties or use such Information for purposes

other than for the purposes of the Contract. This shall not apply to Information which at the time of receipt is generally known or was already known by the receiving party without being obliged to maintain the duty of confidentiality, was transferred by a third party or was developed by the receiving party.

15.2 Information shall be returned to us without delay if a Contract is not awarded. A right of retention by the Customer shall be excluded.

16. Jurisdiction

The exclusive place of jurisdiction – also for cheques and bills receivable – is Schwelm, Germany.

17. Applicable Law

German substantive law shall apply exclusively. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 shall be excluded.