

Sales and Delivery Terms and Conditions for Export of the Weckerle GmbH, 82362 Germany (as at August 2018)

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| <p>1. General, Scope</p> <p>1.1 All current and future quotations, offers, deliveries and other services attributable to the business area Machines provided by us to Purchasers named in clause 1.2 ("Purchasers") are governed exclusively by these "Sales and Delivery Terms and Conditions for Export", which shall be accepted by the Purchasers by the placing of an order or the receipt of delivery. The Purchaser's conflicting or supplementary general terms and conditions shall not apply, even if we do not expressly object to such terms.</p> <p>1.2 Our "Sales and Delivery Terms and Conditions for Export" apply only to Purchasers outside the Federal Republic of Germany who are acting with respect to their trade, business or profession ("Entrepreneur") at the time that the contract is concluded.</p> <p>1.3 Our domestic Purchasers are subject to the "Sales and Delivery Conditions for Domestic Business" (Verkaufs- und Lieferbedingungen für Inlandsgeschäfte).</p> <p>2. Drawings and Descriptions; Proper Usage</p> <p>2.1 We reserve all rights of ownership, copyright and industrial or intellectual property rights (including the right to register these rights) in drawings, plans, samples, cost estimates and other documentation or electronic data concerning the delivery items. These documents and items shall be kept confidential vis-à-vis third parties, even after the termination of the contract. The duty to keep confidential shall only expire if and insofar as the knowledge contained in the documents and items handed over becomes part of the public domain.</p> <p>2.2 The delivery item is intended for the fabrication of products which must conform to the agreed specifications. The delivery item may only be used under the operating conditions mentioned in the instruction manual. Proper usage includes observing these operating instructions. Changes in the construction, attachments or installations on the delivery item are not allowed. The delivery item may not be used without safety devices. The composition of the materials used for the fabrication of products is within the responsibility of the Purchaser. The flash point and the explosion limit of the used materials are to be tested by the Purchaser in respect of the valid guidelines.</p> <p>3. Conclusion of Contract, Content of Contract</p> <p>3.1 Our quotations are not binding. A contract shall not become effective until it has been expressly confirmed by us in a written confirmation of order and shall be governed exclusively by the contents of the confirmation of order and these Terms of Delivery. Oral agreements or promises as well as changes to confirmed orders are only valid if they have been confirmed by our authorized representatives in writing.</p> <p>3.2 Particulars and information contained in product catalogues and price lists only become a binding part of the contract where they are expressly referred to therein.</p> <p>4. Changes to the Delivery Item</p> <p>4.1 We reserve the right to make changes to the construction or in the materials used that deviate from the contractually agreed product description insofar as the normal use of the goods or the use intended by the contract is not significantly or disadvantageously encroached upon and insofar as such changes are not unreasonable for the Purchaser.</p> <p>4.2 Requests for changes made by the Purchaser shall be taken into consideration after the effects on the price and delivery schedule have been agreed. We will check changes in the design the Purchasers requests after the "Design Review Date" specified in the project plan for feasibility and create a written offer at short notice regarding extra costs and an updated project plan. The Purchaser may accept the offer within 2 weeks. If he does not accept the offer, we will create the delivery item in accordance with the original agreement.</p> <p>5. Prices, Adjustment of Price</p> <p>5.1 Unless otherwise specifically agreed, prices shall be understood to be ex-works (EXW), not including packaging, transport and insurance costs or taxes and other charges related to delivery.</p> <p>5.2 For contracts with an agreed duration of more than 3 months, we are able to demand an alteration to the agreed price to the extent that, after conclusion of the contract, we incur costs that we cannot avert, in particular due to conclusion of a collective agreement or changes to the price of materials. The adjustment of price shall be limited in its extent to the amount necessary to cover such increased costs. We also have a corresponding right to adjust the price where, due to delays on the part of the Purchaser, an actual delivery period of more than 3 months results.</p> <p>6. Payment</p> <p>6. Payment</p> <p>6.1 Unless agreed otherwise, payments must be made within 30 days from the date of invoice and delivery of the goods to the account stated in our invoice, free of charges or fees and without any discount. Regardless of the means of payment, the payment shall only then be deemed to have been made when the full amount on the invoice has been credited irrevocably to our account and consequently we have access to it ("Receipt of Payment"). The Purchaser shall bear all additional costs that arise from its choice of means of payment.</p> <p>6.2 Payments shall be made in the currency stated in our quotation or order confirmation.</p> <p>6.3 We are entitled to request prepayment if no credit insurance can be obtained for the Purchaser.</p> <p>6.4 Should the Purchaser fail to make payment within good time, we can demand interest of a rate 7 % p. a. without prejudice to any other legal remedies. We are also at liberty to claim and prove actual greater damage.</p> <p>6.5 An offset or netting off of counter claims or the exercise of a right to withhold payment is only permitted if the Purchaser has obtained a final judgment on legal claims or if these legal claims are recognised, uncontested and accepted by us.</p> | <p>7. Delivery Schedule, Credit Worthiness, Acceptance of Delivery Items</p> <p>7.1 The delivery schedule shall be agreed by the parties to the contract. In order that the delivery schedule will be met, the Purchaser is required to supply in a timely manner all the necessary documentation/genuine samples and to completely answer all technical questions asked of it as well as to provide the specification of the individual details of the desired product.</p> <p>7.2 The delivery date specified has been met if, prior to its expiry, the conditions under which the transfer of risk in accordance with clause 8.2 occurs.</p> <p>7.3 The delivery date specified shall be extended appropriately if we are unable to meet our delivery obligations at all or in good time for reasons that lie beyond our control and that could not be reasonably foreseen by us at the time the contract was concluded. Obstacles that lie beyond our control include in particular the delivery of material to us from our suppliers not within good time or not as agreed. The arising and alleviation of the obstacle will be communicated as soon as possible to the Purchaser. If the delay is in excess of three months or if it has been established that it will last for more than three months, then we or the Purchaser can declare the contract as avoided or rescinded.</p> <p>7.4 If, after the conclusion of the contract, we become aware of circumstances that justify well-founded doubts about the ability to pay or the credit worthiness of the Purchaser and as a result thereof there is a danger that payments due to us under the concluded contract will not be made, we have the right to deny our performance of the contract until the payment is made in accordance with the contract or security is provided for the payment and the Purchaser has discharged any other claims or demands arising out of the business relationship and that are economically connected with the contract in question.</p> <p>7.5 Unless otherwise agreed, the Purchaser is obliged to take receipt of the delivery item within 10 days of receipt of our notification that the delivery item is ready at our place of business. Exceeding such a period by more than 3 days constitutes a fundamental breach of contract and entitles us, without prejudice to other legal remedies, to arrange for the carriage of the delivery item to the Purchaser and to complete the associated formalities at the Purchaser's cost. Failure to take receipt of the delivery item has no effect upon the Purchaser's obligation to pay the purchase price.</p> <p>8. Delivery, Dispatch, Passage of Risk</p> <p>8.1 The place of delivery shall be determined according to the delivery clauses agreed between us and the Purchaser, which are to be interpreted according to Incoterms 2000. Unless another special delivery clause has been agreed, delivery shall always be made ex-works (EXW) at our place of business, regardless of who bears the costs thereof.</p> <p>8.2 Unless otherwise agreed, risk shall pass to the Purchaser at the time when the delivery item is made available to it. If the delivery item is transported to the Purchaser, the risk shall pass to the Purchaser at the latest when the delivery item is collected by the first carrier. If the carriage of the delivery item should be delayed as a result of circumstances beyond our control, then risk shall pass to the Purchaser at the time when the readiness of the delivery item for dispatch is communicated to it.</p> <p>8.3 At the request of the Purchaser, all sent items may be insured at the Purchaser's expense from the point in time at which risk passes. Where damage occurs, we shall transfer the rights under the contract of insurance to the Purchaser concurrently to the Purchaser's performance of its contractual obligations (including the refund of the insurance premium).</p> <p>8.4 If the Purchaser does not accept the delivered Goods in time, we are entitled to charge to the Purchaser any costs, in particular storage costs, that have incurred because the delivered Goods were not accepted in time. If the Goods are stored at our premises, storage costs in the amount of 2% of the market price of the Goods shall be charged per month.</p> <p>9. Preparing installations and assemblies, etc.</p> <p>If our contractual obligation includes the installation, assembly and/or commissioning of the delivery item or similar work, the Purchaser is obliged to make all necessary provisions on site for us to be able to carry out said work. In particular, the Purchaser is obliged to provide power connections, compressed air connections and adequate lighting. Also, lockable and dry rooms must be provided for storing the tools used by the assembly personnel.</p> <p>10. Factory Acceptance tests, acceptance</p> <p>10.1 The parties hereto may agree that the contractual conformity of the delivered item is determined by a joint factory acceptance test in our works premises.</p> <p>10.2 If no date for the acceptance has been agreed, we will notify the Purchaser of the date of the acceptance. Purchaser will at its own expense provide us with sufficient quantities of the sample materials four weeks prior to the acceptance test.</p> <p>10.3 The costs of the acceptance test (including the costs of the sample materials and of the operational equipment) shall be paid by Purchaser. The costs of our personnel will be paid by us.</p> <p>10.4 A written protocol to be signed by both parties will be prepared for the acceptance test. Any defects in the delivery item will be recorded in the protocol.</p> <p>10.5 The delivery item is deemed to be accepted if</p> <ul style="list-style-type: none"> - the delivery item has no or only minor defects, or - the acceptance test could not be carried out through Purchaser's fault. <p>10.6 If a lack of conformity with the contract is found during the acceptance test of the delivery item, we shall be entitled and obliged to immediately rectify and eliminate the non-conformity; the provisions of clause 11 apply mutatis mutandis.</p> |
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- 11. Lack of Conformity of Goods or Documents with Contract, Notice of Defects, Warranty**
- 11.1 Unless a factory acceptance test is carried out, the Purchaser must give us notice in writing of any lack of conformity of the delivery item and/or documents with the contract that is recognisable upon receipt of the delivery item without delay, at the latest one week after it has taken receipt thereof, specifying in detail the nature of the lack of conformity. The Purchaser shall further be obliged to examine the delivery item and/or documents promptly, at the latest within one week of their receipt even though a factory acceptance test has been carried out. The Purchaser shall lose the right to rely on a lack of conformity of the delivery item with the contract if it does not give written notice to us specifying the nature of the lack of conformity within one week after it has discovered it or ought to have discovered the lack of conformity, regardless of the reasons the Purchaser may have for not adhering to this requirement. Written notice of defects discovered must be dispatched to us by the Purchaser within one week of receipt of the goods or of the discovery of a lack of conformity; it is further required that the notice of defects sent by the Purchaser within the week actually reaches us.
- 11.2 If, after the Purchaser has given notice of defects, no lack of conformity of the delivered item can be established, the Purchaser is obliged to pay us the costs incurred in connection with the inspection of the delivered delivery item.
- 11.3 We are only liable for a lack of conformity with the contract of a delivery item that exists at the time the risk passes to the Purchaser. We are not liable in the event of unsuitable or unauthorized use of a delivery item, modifications of the delivery item by the Purchaser which cause an error, incorrect assembly or commissioning by the Purchaser or third parties not instructed by us, normal wear (particularly of wear parts), incorrect or negligent handling of a delivery item, packaging materials and products that are to be packed do not meet all the requirements that we stipulated, non-observance of our instruction manual, incorrect maintenance, unsuitable operating material and substitute materials, faulty construction work, unsuitable foundations or in the event of climatic, chemical, electro-chemical or electrical influences, insofar as we are not responsible for them. The Purchaser is aware of the fact that the full operational capability of individually constructed systems is achieved only after a reasonable running-in period.
- 11.4 We are entitled to remedy or remove a lack of conformity of the delivery item or the documents by repair or replacement even after the agreed date of delivery. Insofar as the contract or the circumstances of the conclusion of the contract - in particular the negotiations that took place - do not indicate to the contrary, a lack of conformity does not exist just because the delivery item does not correspond to the current technical and other standards or regulations in the country of destination (registered place of business of the Purchaser) or because the delivery item is not fit for certain purposes for which goods of the same description would ordinarily be used.
- 11.5 Insofar as the lack of conformity with the contract of the delivery item or the documents is not remedied by repair or replacement within a reasonable time, the Purchaser is entitled to demand a reduction in the purchase price corresponding to the reduced value of the delivery item.
- 11.6 In case of a lack of conformity with the contract of the delivery item or the documents, the Purchaser is not entitled to demand a rescission or annulment of the contract instead of a reduction of purchase price unless the lack of conformity amounts to a fundamental breach of the contract. No fundamental breach of contract exists where we remedy the lack of conformity with the contract within a reasonable period of not less than six weeks to be fixed by the Purchaser.
- 11.7 The Purchaser's rights to make claims under any warranty expire within twelve months after the delivery item has been received by the Purchaser. If an acceptance test has been agreed, the period of limitation shall begin at the end of the day on which the acceptance test has been carried out, or - if the test has not been carried out through Purchaser's fault - should have been carried out, at the latest, however, at the end of the day on which Purchaser has put the delivery item into operation for his own commercial purposes.
- 11.8 If, after the Purchaser has given a notice of defect, a defect of the Goods cannot be found, the Purchaser must reimburse to us all costs having incurred in relation to the inspection of the Goods.
- 12. Liability, Compensation**
- 12.1 Our liability to pay compensation for damage - in particular for consequential economic loss due to late delivery or a lack of conformity with the contract of the delivery item or the documents - is hereby excluded, unless such damage results from intention or gross negligence at the least.
- 12.2 Our liability in case of bodily injury, in accordance with applicable statutory product liability laws and regulations that cannot be contractually excluded and in case of infringements of data protection regulations (subject to sec. 13.2) remains unaffected.
- 13. Privacy Policy**
- 13.1 We collect, process or use personal data only within the scope of data protection regulations. For details, please refer to our Privacy Policy, which you can request from us at any time.
- 13.2 Insofar as these Sales and Delivery Terms and Conditions for Export, including the subsequent stipulations, do not result in anything else in case of infringements of data protection regulations, we shall be liable in accordance with the legal regulations. For damages - irrespective of the legal ground - we are only liable in the event of intent or gross negligence.
- 14. Reservation of Title**
- 14.1 We retain title to the delivery item until the purchase price of the goods has been paid in full in accordance with clause 6.1 of this Agreement, to the extent that such a reservation of title is effective under the law applicable to this Agreement.
- 14.2 The Purchaser must take all measures that are necessary to secure or retain this right to retention of title or to procure equivalent security rights in the country of destination (the Purchaser's registered place of business). Non-compliance by the Purchaser with this duty constitutes a fundamental breach of contract.
- 14.3 These terms concerning reservation of title do not affect the terms of the transfer of risk in clause 8.2 of this Terms and Conditions.
- 15. Place of Jurisdiction, Arbitration, Applicable Law**
- 15.1 The courts in our place of business in 82362 Weilheim, Germany shall have exclusive jurisdiction over all disputes arising out of this contract if the registered place of business of the Purchaser is within the European Union. All disputes arising out of or in connection with the contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with the said Rules if the registered place of business of the Purchaser is outside the European Union. The place of arbitration shall be in 82362 Weilheim, Germany. The arbitration proceedings shall be conducted in German.
- 15.2 The Terms of Delivery and the contractual relationship of the contracting parties shall be governed by the rules in the United Nations Convention on the International Sale of Goods (CISG) dated April 11, 1980. Legal questions concerning matters that are not regulated by this Convention or that cannot be settled in conformity with the general principles on which it is based shall be decided according to the substantive provisions of Swiss law.
- 16. Final Provisions**
- 16.1 In the event that any individual term or provision of the present Sales and Delivery Terms and Conditions for Export or any agreement based thereon should for any reason be held to be invalid or legally unenforceable in any respect, such invalidity or unenforceability shall not affect any other term or provision or any other contract. In case of such an invalid or legally unenforceable term or provision or contract, the parties shall jointly seek a valid and enforceable term or contract that corresponds as closely as is allowed to the economic purpose of the invalid or unenforceable term or agreement.
- 16.2 The parties are both obliged to take whatever measures are necessary to achieve the purpose of the contract and to refrain from doing anything that intrudes upon the achievement of and compliance with the contract.