

## **General Terms and Conditions of Purchase**

### **§ 1 Scope of application, form**

(1) These General Terms and Conditions of Purchase (GTCP) apply to all business relations between Schwäbische Werkzeugmaschinen GmbH (hereinafter 'SW') and its business partners and suppliers (hereinafter 'the Seller'). These GTCP shall only apply if the Seller is an entrepreneur (as understood by § 14 of the BGB [German Civil Code]), a juridical person under public law or a special fund under public law.

(2) The GTCP shall apply in particular to contracts for the sale and/or delivery of movable objects (hereinafter 'the Goods'), irrespective of whether the Seller manufactures the Goods himself or purchases them from suppliers (§§ 433, 650 BGB). Unless otherwise agreed, the GTCP in the version valid at the time of the buyer's order, or at all events in the version last communicated to him in text form, shall likewise apply as a framework agreement for similar future contracts, without SW having to refer to them again in each individual case.

(3) These GTCP shall apply exclusively. Deviating, conflicting or supplementary General Terms and Conditions of Business of the Seller shall only become part of the contract if and insofar as SW has expressly agreed to their validity in writing. This requirement of consent shall apply in all cases – for example, even if SW accepts the seller's deliveries without reservation in the knowledge of the Seller's general terms and conditions.

(4) Individual agreements made with the Seller in individual cases (including collateral agreements, supplements and amendments) shall in every case take precedence over these GTCP. Subject to proof to the contrary, a written contract or written confirmation from SW shall be definitive in determining the content of such agreements.

(5) Legally relevant declarations and notifications by the Seller in relation to the contract (e.g. the setting of a deadline, a reminder or a withdrawal) must be made in writing, i.e. in written or text form (e.g. letter, e-mail, fax). Statutory formal requirements and further evidential demonstrations, in particular in the event of doubts about the legitimacy of the party making the declaration, remain unaffected thereby.

(6) References to the validity of statutory provisions shall only have significance by way of clarification. Even without such clarification, the statutory provisions shall therefore apply, unless they are directly amended or expressly excluded in these GTCP.

### **§ 2 Conclusion of the contract**

(1) Orders placed by SW shall be deemed binding at the earliest upon written submission or confirmation. The Seller shall be obliged to notify SW of obvious errors (e.g. typographical and calculation errors) and of any incompleteness of the order, including the order documents, for the purpose of correction or completion before acceptance; otherwise the contract shall be deemed not to have been concluded.

(2) The Seller shall be obliged to confirm orders in writing within a term of 3 working days (Saturday is not considered a working day) or else to execute them without reservation, in particular by dispatching the goods (constituting acceptance).

A delayed acceptance is considered a new offer and requires acceptance by SW.

### **§ 3 Delivery time and delayed deliveries**

(1) The delivery time stated by SW in the order is binding. If the delivery time was not stated in the order and was not otherwise agreed, it shall be 2 weeks from the conclusion of the contract. The Seller shall be obliged to inform SW immediately in writing if he is likely to be unable to meet agreed delivery times – for whatever reason.

(2) If the Seller does not perform his service or does not perform it within the agreed delivery time or if he is in default, the rights of SW – in particular with reference to withdrawal and compensation for damages – shall be determined by the relevant statutory provisions. The regulations in section 3 remain unaffected thereby.

(3) If the Seller is in default, SW may claim – in addition to any further legal claims – a one-off compensation payment for damages caused by default in the amount of 1% of the net price per completed calendar week, but in total no more than 5% of the net price of the goods subject to delay. SW reserves the right to prove that

higher damages have been incurred. The Seller reserves the right to prove that no damage at all or only very much less damage has been caused.

#### **§ 4 Performance, delivery, transfer of risk, default of acceptance**

(1) Without the prior written consent of SW, the Seller is not entitled to have the services owed by him performed by third parties (e.g. subcontractors). The Seller bears the procurement risk for his services, unless otherwise agreed in individual cases (e.g. limitation to stock).

(2) Delivery shall be made in accordance with DDP Incoterms 2020 to the place specified in the order. If the place of destination is not specified and nothing else has been agreed, delivery must be made to SW's main place of business in Waldmössingen. The respective destination is also the place of fulfillment for the delivery and any subsequent fulfillment (obligation of performance at domicile of recipient). In principle the supplier shall design the packaging on the basis of economic, qualitative and ecological criteria. Packaging materials shall be used to the extent necessary, and shall be taken back free of charge at the place of delivery/acceptance of the Goods in accordance with the Verpackungsgesetz [Packaging Act]. SW's logistics manual shall apply as appropriate.

(3) The delivery shall be accompanied by a delivery note stating the date (issue and dispatch), the contents of the delivery (article number and quantity) and the SW order identifier (date and number). If the delivery note is missing or incomplete, SW cannot be held responsible for any resulting delays in processing and payment. Separate from the delivery note, SW must be sent a corresponding dispatch note with the same content.

(4) The risk of accidental loss or accidental deterioration of the item shall pass to SW upon delivery of the Goods at the place of fulfillment. If an acceptance inspection has been agreed, this shall be decisive for the transfer of risk. The statutory provisions of the law on contracts for work and services shall also apply in the case of an acceptance inspection as appropriate. If SW is in default of acceptance, this shall be considered equivalent to handover or acceptance.

(5) The occurrence of a default of acceptance on the part of SW shall be subject to the relevant statutory provisions. However, the Seller must expressly offer SW its services even if a determined or determinable calendar period has been agreed for an action or cooperative activity on the part of SW (e.g. provision of materials). If SW is in default of acceptance, the Seller can demand compensation for his additional expenses in accordance with the statutory provisions (§ 304 BGB). If the contract concerns an unacceptable item to be manufactured by the Seller (as an individual production), the Seller shall only be entitled to further rights if SW undertakes to cooperate and is responsible for the failure to cooperate.

#### **§ 5 Prices and terms of payment**

(1) The price stated in the order is binding. All prices are to be understood as including statutory value added tax, unless this is shown separately.

(2) Unless otherwise agreed in individual cases, the price covers all services and ancillary services of the Seller (e.g. assembly, installation) as well as all ancillary costs (e.g. proper packaging, transport costs including any transport and liability insurance that may be required).

(3) The agreed price shall fall due for payment within 30 calendar days of the completed delivery (including delivery of the complete and correct technical documentation) and performance (including any acceptance inspection agreed to) and receipt of a properly made out invoice. If SW makes payment within 14 calendar days, the Seller shall grant SW a 3% discount on the net amount of the invoice. In the case of bank transfer, payment shall be deemed to have been made on time if the payment order from SW is received by SW's bank before expiry of the payment deadline; SW shall not be held responsible for delays caused by the banks involved in the payment process.

(4) SW is not liable for interest payable after the due date. Delayed payments shall be subject to the relevant statutory provisions.

(5) SW is entitled to rights of offsetting and retention, as well as that of defense on grounds of non-performance of contract, to the extent provided by law. In particular, SW is entitled to withhold due payments as long as SW is still entitled to claims against the Seller arising from incomplete or defective performance.

(6) The Seller has a right of offsetting or retention only in the case of counterclaims that have been legally established or are undisputed.

## **§ 6 Secrecy and retention of title**

(1) SW reserves the right of ownership and copyright in respect of any illustrations, plans, drawings, calculations, execution instructions, product descriptions and other documents. Such documents shall be used exclusively for purposes of the contractual performance and are to be returned to SW after completion of the contract. The documents must be kept secret from third parties, even after termination of the contract. The obligation of secrecy shall only expire if and insofar as the knowledge contained in the documents provided has become generally known.

(2) The above provision shall apply as appropriate to substances and materials (e.g. software, finished and semi-finished products) as well as to tools, templates, samples and other objects that SW provides to the seller for production purposes. Such items are to be stored separately at the Seller's expense as long as they are not being processed, and insured to a reasonable extent against destruction and loss.

(3) Any processing, mingling or combination (further processing) by the Seller of objects provided shall be carried out on SW's behalf. The same applies if SW processes the delivered Goods further, so that SW is considered the manufacturer and acquires legal title to the product at the latest with the further processing in accordance with statutory provisions.

(4) The transfer of ownership of the Goods to SW must take place unconditionally and without regard to the payment of the price. If, however, SW accepts an offer of transfer of ownership made by the Seller in individual cases based on payment of the purchase price, the Seller's reservation of title shall expire at the latest upon payment of the purchase price for the delivered Goods. SW remains authorized to resell the goods in the ordinary course of business even before payment of the purchase price, with advance assignment of the resulting claim (alternatively, the simple reservation of title extended to resale). This excludes all other forms of reservation of title, in particular any extended or forwarded reservation of title and reservation of title that has been extended to cover the further processing.

## **§ 7 Defective deliveries**

(1) SW's rights in the event of material defects and defects of title in relation to the Goods (including incorrect and short delivery as well as improper assembly, or defective assembly, operating or instruction manuals) and in the event of other breaches of duty by the Seller shall be governed by the statutory provisions, unless otherwise stipulated below.

(2) In accordance with the statutory provisions, the Seller shall be liable in particular for ensuring that the goods have the agreed quality at the time of the transfer of risk to SW. In any case those product descriptions which are the subject of the respective contract, particularly by designation or reference in the SW order, or which have been included in the contract in the same way as these GTCP shall be deemed to be an agreement on quality. It makes no difference here whether the product description originates from SW, the Seller or the manufacturer.

(3) In deviation from § 442, section 1, page 2 of the BGB, SW is also entitled to claims for defects without restriction in cases where the defect remained unknown to SW at the time of conclusion of the contract in consequence of gross negligence.

(4) The commercial duty to examine the product and give notice of defects shall be subject to the statutory provisions (§§ 377, 381 of the HGB [German Commercial Code]), though with the following proviso: The obligation to inspect the goods is limited to defects which come to light during the incoming goods control in the course of external inspection, including the delivery documents (e.g. transport damage, wrong or short delivery) or which are detectable in the course of the quality control on the basis of spot checks. If an acceptance inspection has been agreed, there is no obligation to examine the delivery. Otherwise it depends on the extent to which such an examination is feasible in the ordinary course of business, taking into account the circumstances of the individual case. The obligation to give notice of defects discovered at a later date remains unaffected.

Irrespective of the duty to examine the Goods, the complaint (notification of defects) shall in any case be deemed to be prompt and timely if it is sent within 8 working days of discovery or, in the case of obvious defects, of delivery.

(5) Subsequent performance shall also include the removal of the defective Goods and their reinstallation, in cases where the Goods have been installed in or attached to another object in accordance with their nature and intended use; SW's legal claim to reimbursement of the associated expenses shall remain unaffected thereby. The Seller shall bear the expenses in connection with testing and subsequent performance even if it turns out that actually there was no defect. The liability for damages in case of unjustified demand for removal of defects remains unaffected; in this respect, however, SW is only liable if SW has recognized or failed out of gross negligence to recognize that there was no defect.

(6) Notwithstanding the legal rights and the rulings in section 5 above, the following applies: If the Seller does not fulfill his obligation of subsequent performance – at SW's discretion, either by remedying the defect (rectification of defects) or by delivering a defect-free item (replacement delivery) – within a reasonable period of time set by SW, SW may remedy the defect itself and demand reimbursement of the necessary expenses or a corresponding advance payment from the Seller. If the subsequent performance by the Seller has failed or is unreasonable for SW (e.g. due to particular urgency, endangerment of operational safety or imminent occurrence of disproportionate damage), no deadline need be set; SW shall inform the Seller of such circumstances immediately, if possible in advance.

(7) Furthermore, in the event of a material defect or defective legal title, SW shall be entitled, in accordance with statutory provisions, either to reduce the purchase price or to withdraw from the contract. In addition, SW shall be entitled to compensation for damages and expenses in accordance with the statutory provisions.

## **§ 8 Supplier recourse**

(1) In addition to claims for defects, SW shall be entitled without restriction to the legally determined rights of recourse within a supply chain (supplier recourse as understood by §§ 445a, 445b, 478 of the BGB). In particular, SW shall be entitled to demand from the seller exactly the type of subsequent performance (repair or replacement) that SW owes to its own customer in the individual case. The legal right of choice (§ 439, section 1 of the BGB) is not limited by this.

(2) Before SW acknowledges or fulfills a claim for defects asserted by its own customers (including reimbursement of expenses in accordance with §§ 445a section 1, 439 sections 2 and 3 of the BGB), SW shall notify the Seller and request a written statement of the latter's position, explaining the facts of the case. If a substantiated statement is not made within a reasonable period of time and no amicable solution has been reached, the claim for defects actually allowed by SW shall be deemed to be owed to the buyer. In this case, the Seller shall be responsible for providing proof to the contrary.

(3) The claims from supplier recourse shall also apply in cases where the defective Goods have been further processed by SW or another business, e.g. by incorporation in another product.

## **§ 9 Producer liability**

(1) If the Seller is responsible for product damage, he must release SW from claims by third parties to the extent that the cause lies within his sphere of control and organization and he himself is liable in terms of the external relationship.

(2) Within the scope of his obligation to release SW from such claims, in accordance with §§ 683 and 670 of the BGB the Seller must reimburse SW for expenses which arise from or in connection with a claim by a third party, including any product recall actions carried out by SW. SW shall inform the Seller of the content and scope of recall measures – as far as is possible and reasonable – and give him the opportunity to comment. Further legal claims shall remain unaffected thereby.

(3) The Seller must take out and maintain product liability insurance with a lump sum coverage of at least 12 million euros per case of personal injury / property damage.

## **§ 10 Limitation period**

(1) The mutual claims of the contracting parties shall become statute-barred in accordance with the statutory provisions, unless otherwise provided for below.

(2) In deviation from § 438 section 1 no. 3 of the BGB, the general limitation period for claims for defects shall be 3 years from the transfer of risk. If an acceptance inspection has been agreed, the limitation period shall commence upon acceptance. The 3-year period of limitation also applies similarly to claims arising from defects of title, whereby the statutory period of limitation for third party claims for restitution of property (§ 438 section 1 no. 1 of the BGB) remains unaffected thereby; furthermore claims arising from defects of title do not become time-barred under any circumstances as long as the third party can still assert the right, particularly in the absence of a limitation period, against SW.

(3) The periods of limitation of sales law, including the above extension, shall apply – to the statutory extent – to all contractual claims for defects. Insofar as SW is also entitled to extra-contractual claims for damages due to a defect, the regular statutory period of limitation (§§ 195 and 199 of the BGB) shall apply here, except in a case where the application of the periods of limitation of sales law would lead to a longer period of limitation in the individual case.

### **§ 11 Choice of law and place of jurisdiction**

(1) These GTCP and the contractual relationship between SW and the Seller shall be governed by the laws of the Federal Republic of Germany, excluding international unitary law, in particular the UN Convention on Contracts for the International Sale of Goods.

(2) If the seller is a merchant in the sense of the Commercial Code, a legal entity under public law or a special fund under public law, the exclusive – and also international – place of jurisdiction for all disputes arising from the contractual relationship shall be SW's registered office in Waldmössingen. The same shall apply if the Seller is an entrepreneur as understood by § 14 of the BGB. SW shall however also be entitled in all cases to bring an action at the place of performance of the delivery obligation in accordance with these GTCP and/or an individual agreement having precedence, or else at the general place of jurisdiction of the Seller. Statutory provisions that take precedence, in particular regarding exclusive jurisdiction, shall remain unaffected thereby.

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