



## Conditions of Purchase 08/20 of the Dieffenbacher Group

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## 1. Applicability, orders

### 1.1.

These conditions of purchase apply exclusively to all supplies and other services of the seller. They also apply to all future supplies and services of the seller, provided that the buyer does not apply or agree upon different conditions in individual cases.

Contradictory or different conditions stipulated by the seller are only valid after an explicit written confirmation from the buyer.

These conditions of purchase shall also apply if the buyer, having knowledge of contradictory or different conditions of the seller, accepts or pays for supplies and services of the seller without reservation.

All items and contractual clauses of the purchase order take precedence over the conditions of purchase listed herein.

### 1.2.

These conditions of purchase shall only apply for companies, legal entities and special property under public law.

### 1.3.

All agreements made between the buyer and the seller in the execution of this contract or of individual orders (referred to as "Contract", "Order", or "Order letter" in the following) shall be put into writing. Verbal agreements prior or during conclusion of the contract shall be confirmed by the buyer in writing to become effective.

Orders as well as amendments and supplements to orders shall only be deemed legally binding if they are made in writing. Fax, e-mail or remote data transmission are also acceptable in this instance. Written correspondence shall be conducted with the ordering purchase department. Agreements reached with other departments require an explicit written confirmation from the ordering department before they can be deemed binding.

### 1.4.

If an order from the buyer is not acknowledged by the seller within two weeks after receipt of the order, the buyer shall be entitled to cancel such order.

## 2. Scope of supplies and services, place of performance

### 2.1.

The supplies and services of the seller constitute a single entity for which the seller shall be responsible for.

Therefore, the seller shall be obliged to perform or provide – without any additional compensation – all work, measures and expenditure which prove necessary in order to guarantee – firstly – complete, correct, professional construction of flawless quality in compliance with regulations and – secondly – that the machinery and equipment to be delivered can be operated in accordance with the intended use, even if some or all of this machinery and equipment has only partially or inaccurately been described or mentioned – or not described or mentioned at all – in the cost estimate, in the ordering letter, in sketches or other documents.



## **2.2.**

If in the course of order processing, fundamental design modifications prove necessary or advisable, any necessary additional services on the part of the seller shall be offered on the same conditions and on the same price basis as specified in the main order. The buyer shall place a supplementary order in writing before any such design modification work begins.

## **2.3.**

The seller is responsible for ensuring the completeness of the scope of supply. In this respect, by way of example, the seller's scope of supply includes all foundation bolts, other fastening components, couplings, pulleys, V-belts, belt guards, protective devices and environmental protection devices (according to local requirements according to 3), which form part of the machinery and equipment. The seller shall also supply the necessary mating flanges for connecting any pipes and transfer chutes.

## **2.4.**

Unless otherwise agreed, the seller shall deliver CPT the destination indicated in the order. All trade terms shall be governed by the latest version of the Incoterms in force at the time the contract is signed.

## **2.5.**

The quantities ordered shall be binding. Any consignments exceeding or falling short of the quantities specified in the order shall be subject to an explicit written consent by the buyer. Partial shipments are not permitted unless agreed to by the buyer in writing.

## **2.6. Shipping documents**

All consignments shall be accompanied by a delivery note and a packing list. In addition, a packing list shall be sent to the buyer per e-mail (in Excel format). The buyer shall provide the prepared documents in the form of a PC file.

All shipping documents and all documents relating to the delivery contract shall include details of the article designation as well as material, order and production numbers of the buyer (provided such information has been submitted to the seller), order item number, order date, quantities and the type of packaging. The seller shall be held liable for the consequences of incorrect declarations on bills of lading/waybills.

## **3. Legal or governmental regulations, technical, safety and environmental protection regulations**

### **3.1. General**

The seller warrants that its deliveries and services and their use do not violate legal or regulatory requirements of any kind. The seller is obliged to indemnify the purchaser against all claims arising out of or in connection with its delivery upon first written request. This indemnification obligation also extends to all expenses incurred by the purchaser from or in connection with the violation of legal or regulatory requirements.

With the design of the machinery, the seller shall ensure compliance with statutory requirements (of the country/state of destination) and the official regulations in force at the place of destination. If the buyer fails to inform the seller about the place of destination, the seller shall ensure compliance with the regulations of the Product Safety Act (ProdSG), the European Union Regulation on Chemicals (REACH), the ATEX Equipment Directive and the European Union Machinery Directive in their latest version.



### **3.2. Environmental protection**

With respect to environmental protection, the seller shall ensure compliance with the statutory requirements (of the country/state of destination) and the official regulations in force at the place of destination, in particular with regard to hazardous materials, dust emissions and noise levels.

### **3.3. Physical data**

Unless otherwise indicated in the order, national and European design standards shall be applied, and all gauges, counters, testing/measuring equipment and drawings shall be based on the metric system.

## **4. Technical documentation**

### **4.1.**

The seller shall be obliged to provide the complete technical documentation in accordance with the order documents and the EC Machinery Directive within the specified period. The documents shall clearly and comprehensively define the necessary spare parts. If requested by the buyer, the seller shall indicate the manufacturer of any vendor parts. The documents shall be fully comprehensible and include any necessary sectional/exploded-view drawings as well as clear and comprehensive definitions of the necessary spare parts. If the documents to be provided exist in catalogue form, all superfluous texts and illustrations not necessary for clarifying the function of the parts concerned shall be removed or crossed out.

### **4.2.**

Should the seller fail to provide the contractual technical documentation by the agreed date, thus causing a delay in delivery, assembly/installation and/or commissioning or the acceptance of the entire system, then the seller shall be liable to pay any resultant damages incurred by the buyer, e.g. end user penalties. The delivery obligation of the seller shall only be deemed fulfilled if the technical documentation is both complete and correct. Until such time, the buyer reserves the right to withhold any remaining payments due.

## **5. Price, payment**

### **5.1.**

Unless otherwise agreed, the agreed prices shall be deemed as binding and firm and shall include costs for delivery CPT the destination indicated in the order as well as for packaging, preservation, loading, freight and transport insurance as specified in the contract. These prices cover the entire scope of supply and services. Equally, the agreed hourly rates and incidentals flat rate shall remain unchanged until the contract has been fulfilled.

### **5.2.**

The statutory value-added tax is not included in the price.

### **5.3.**

All changes in price are subject to a separate written agreement. Payments owed by the buyer shall only become due once the buyer has received the complete delivery/service and invoices and once the seller has fulfilled all the necessary secondary obligations; however, this shall not be before the agreed date.



#### 5.4.

Invoices shall be forwarded to the buyer in triplicate for each individual delivery. Under no circumstances – except in the case of dutiable goods – must invoices be included with goods consignments. In the case of dutiable goods, an original invoice must be included with the goods and accompanying documents; 3 original invoices shall also be mailed to the buyer. All invoices shall include the order number of the buyer without fail, and every detail on the invoice shall be itemized to match the order of the; otherwise, the invoices will be returned to the seller unpaid. The seller shall be responsible for all the consequences resulting from non-compliance with this obligation unless he can prove that they are not imputable to him.

#### 5.5.

The agreed terms of payment shall be specified in the order documents of the buyer. Unless otherwise agreed, the following provisions shall apply:

Subject to subsequent inspection/checking, invoice amounts shall be settled by the buyer as follows

- within 30 days after the due date with 3 % discount or
- within 60 days after the due date without deductions.

#### 5.6.

Amounts due to the seller from the buyer as a result of this order may not be assigned to third parties without the prior consent of the buyer.

#### 5.7.

Within the scope of legal provisions, the buyer shall be entitled to set off or withhold payments.

#### 5.8.

The contract parties agree that the duties of payment of the contract are to be understood as euro, especially the fixed monetary value (unless otherwise determined in writing).

## 6. Delivery and performance dates, delays, penalties

#### 6.1.

The agreed dates for the documentation and the delivery of the machinery and equipment, as well as for all other services, shall be as defined in the order documents and the accompanying annexes. The delivery date indicated in the order shall be binding.

#### 6.2.

The delivery shall be deemed "on time" if the delivery items are available at the agreed delivery address on the agreed delivery date as well as being of the agreed quality. Early deliveries or partial deliveries are subject to prior written approval from the buyer. Otherwise, the buyer shall reserve the right to refuse acceptance of the delivery or to bill the seller for any extra expenditure incurred as a result (e.g. storage costs).



### 6.3.

In the interest of overall disposition, the buyer is entitled to demand temporary suspension and/or temporary speeding up of individual deliveries or services or of the total performance within the confines of the overall schedule. Should this action have a major impact on costs, the price in question shall be appropriately adjusted.

### 6.4.

If specially requested by the buyer, the seller shall provide a schedule which indicates the points in time at which the individual stages of production are planned.

The seller shall be obliged to inform the buyer immediately in writing if circumstances arise or can be foreseen that show that the agreed delivery date cannot be observed.

### 6.5.

In case of a delay in delivery, the buyer is entitled to the legal claims.

Should the seller fail to comply with the contractually agreed delivery dates, the buyer shall be entitled to claim payment of the following penalties:

#### 6.5.1. Technical documentation

The seller shall pay 0.5 % – up to a maximum amount of 5 % – of the total value of the order for each week of delay, or part thereof, in the delivery of the specified technical documentation.

#### 6.5.2. Machinery, equipment and services

[Rev. 06] The seller shall pay 1.0 % – up to a maximum amount of 5 % – of the total value of the order for each week of delay of delivery of machinery and equipment as well as for the delayed delivery of services.

**As to section 6.5.1 and 6.5.2, the following shall apply:**

[Rev. 06] The penalties specified in sections 6.5.1 and 6.5.2 together shall not exceed 5% of the total value of the order. The buyer's claim for penalties is limited to this total maximum amount.

[Rev. 06] The buyer is entitled to assert the penalty in addition to the seller's performance; the buyer is obliged to assert the reservation of the penalty within 10 working days, calculated from receipt/acceptance of the delayed delivery/service, but no later than upon payment of the invoice, which succeeds chronologically to the delayed delivery/service.

[Rev. 06] The buyer reserves the right to assert an actually incurred higher damage caused by seller's default - taking into account a possibly already paid penalty. The seller has the right to prove that no or significantly less damage has occurred. If the seller shifts the delivery date, the buyer is entitled to demand the penalty, even if the buyer has not objected to the postponement.

### 6.6.

In the event of delays in delivery or services on the part of the seller – and provided that the buyer has set a reasonable deadline for such delivery or services – the buyer may, after expiry of the deadline, terminate the contract and demand payment of damages in lieu of the performance with respect to all parts not yet supplied as well as all supplied parts which cannot be appropriately used without the non-supplied parts. Payments already received shall be returned, including an interest of 5 percentage points over the respective prime rate. If the buyer claims damages, the seller shall have the right to prove that the violation of duty is not imputable to him.



If the buyer is only able to purchase machinery and equipment elsewhere by using the workshop drawings provided by the seller, the latter shall be obliged to issue such drawings free of charge. If the seller owns industrial property rights to the machinery and equipment, the seller shall be obliged to allow the manufacture by another party for the purpose of replacement procurement.

## **6.7.**

In the event of delays in delivery or services on the part of the seller, the buyer may suspend his contractual obligations accordingly.

## **7. Force majeure**

### **7.1.**

Force majeure includes in particular fire, flooding, storms, earthquakes and other phenomena of nature, strikes, lockouts or other plant incidents, and war.

### **7.2.**

Such events shall only be recognized if they have a direct impact on a party's ability to fulfill this contract. A party to the contract may only cite such events as a reason for non-fulfillment of the contract if the other party to the contract is informed in writing of both, the beginning and the end of the instance of force majeure within three days respectively. The effective date shall be the day on which such notice is sent off. This notice shall be accompanied by a signed confirmation from the local chamber of industry and commerce.

### **7.3.**

In the event of an instance of force majeure, the buyer shall be entitled to demand delivery at a later date without any claims arising to the seller.

### **7.4.**

If an instance of force majeure lasts longer than three months or if the seller is unable to fulfill his obligation for a prolonged period of time, the buyer shall be entitled to fully or partially terminate the contract. . In such instance, performed deliveries/services of the seller shall be remunerated in accordance with this contract. Any additional benefits, especially damage payments for any losses incurred, shall be excluded.

## **8. Production monitoring, quality assurance**

### **8.1.**

The buyer and the end user reserve the right to check the progress of manufacturing in the workshops of the seller or the seller's subcontractors at any time. For this purpose, the buyer shall be granted access to the plant and company grounds.

### **8.2.**

Any defects or faults found during such inspections shall be rectified. Any costs thus incurred shall be borne by the seller.





### **8.3.**

The seller shall be obliged to inspect the manufactured machinery and equipment in accordance with the technical conditions stipulated in this contract, the agreed quality directives and the applicable statutory regulations and – as far as is possible – shall subject the machinery and equipment to test runs. The buyer and the end user are entitled to take part in these tests/inspections. For this purpose, the seller shall inform the buyer of any impending tests or inspections 14 days in advance.

### **8.4.**

All containers, units and pipelines operating under pressure shall be inspected and checked by the inspection authorities responsible at the manufacturing location at the seller's cost. All such parts must comply with European and/or German or other contractually agreed regulations.

Certification provided by such authorities shall be forwarded to the buyer immediately and shall become an integral part of the technical documentation.

### **8.5.**

If these inspections reveal defects/faults or if the manufactured machinery and equipment do not fulfill the conditions stipulated in the contract, the seller shall be obliged to immediately rectify such defects/faults at his own cost. Such rectification work does not entitle the seller to extend the delivery deadlines specified in the contract. This machinery and equipment shall then be re-inspected.

### **8.6.**

These inspections do not constitute machinery and equipment acceptance tests, neither do they affect the seller's liability for defects in any way whatsoever, regardless of whether the buyer or the end user were in attendance at these inspections or not.

### **8.7.**

The sole responsibility of the seller as well as the seller's obligations with regard to liability for defects and any other liability shall not be restricted or lifted, even if the buyer is involved in configuring the design and determining the materials used and how they are worked/machined.

### **8.8.**

The seller shall forward a works certificate to the buyer for each performed check or inspection – either immediately or, at the latest, when the "ready for shipping" notification is sent. The works certificates shall include the confirmation that the machinery and equipment are as specified and fulfill the agreed technical conditions.

## **9. Shipment, packaging**

### **9.1.**

Shipment shall be as specified by the buyer. The seller shall agree the shipping details with the buyer's shipping department in good time before dispatch of the goods.

### **9.2.**

Unless a special form of packaging is specified in the order, the seller shall select an economical and suitable form of packaging and comply with the relevant contractual and statutory provisions, in particular the HPE (Federal Association "Wood Packaging, Pallets, Export Packaging") Directives.





### **9.3.**

Small components and particularly sensitive parts especially shall be packaged in boxes. All non-bare parts shall receive a protective coating, providing that they have not yet received their finish coat. Bare parts shall be treated with a preserving agent so as to provide sufficient protection for at least one year following delivery. All electrical equipment shall be packaged in watertight polythene.

### **9.4.**

The seller shall make any requests for the return of packaging separately and in writing. In such instances, costs for the return shall be borne by the seller and at the seller's own risk. If such information is not received, the buyer shall be entitled to dispose of the used packaging and bill the seller for any resultant costs incurred. The same shall apply in the case of non-reusable packagings.

### **9.5.**

In the case of out-of-gauge loads exceeding the DB (Deutsche Bahn/German Rail) load limit gauge or the load limit gauge of a covered truck, the buyer must receive loading diagrams including precise weight details four months before loading is due to take place. In the event of non-compliance with this requirement, all resultant damages and losses incurred shall be borne by the seller.

In the case of normal loading, the seller shall request shipping instructions and freight marking instructions from the buyer's shipping department four weeks in advance of shipment and forward any preliminary freight data. The finalized data – including the information whether the delivery is a partial delivery or a complete delivery – shall be sent to the buyer 14 days before the scheduled loading date. In the event of a partial delivery, the seller shall also indicate the value of the consignment. Loading of the machinery may only commence after an explicit approval has been received from the buyer. The seller shall be informed of any other details in good time before the shipment date.

### **9.6.**

In the event of direct shipment to the end user, all shipping documents shall be compiled by the buyer or according to the buyer's specifications, also in the case of subsequent deliveries. The same shall apply throughout the installation and warranty periods, regardless of whether such subsequent deliveries are requested by the seller's or the buyer's staff at the job site or whether they are asked for directly by the end user.

### **9.7.**

All additional, duty and/or storage costs incurred as a result of non-compliance with these provisions shall be borne by the seller.

### **9.8.**

The buyer shall be entitled to select the mode of transport. The seller shall be obliged to safely load and stow the cargo. Unless otherwise agreed, "door-to-door" transport insurance shall be arranged and paid for by the seller. The buyer generally disclaims transport insurance by the forwarding agent.



## **9.9.**

The seller shall be obliged to meet the safety regulations applying to international trade for deliveries which: have been manufactured, stored, transported by order of the buyer and which are sent or taken over by the same; have to be produced, stored, worked and processed, packed and shipped in (safe) manufacturing sites and on (safe) trade centers. The deliveries shall be protected from unauthorized access during manufacturing, storage, working and processing, packing, shipping and transport. Only qualified and reliable staff shall deal with the manufacturing, storage, working and processing, packing, shipping, transport and receipt of the deliveries. In addition, the seller shall make sure his sub-suppliers/business partners also consider the abovementioned regulations.

## **10. Sending out technical staff of the seller to job site**

### **10.1.**

If requested by the buyer, the seller shall send sufficiently qualified technical staff to the site where the entire system is to be installed.

### **10.2.**

Any costs incurred by the staff of the seller at the job site shall be paid for by the seller, e.g. telephone, telex, fax or e-mail charges, requisition of material from the buyer or the end user property against receipt, travel costs involved in the procurement of job site material, etc. These amounts shall generally be billed after completion of the assembly/installation works.

### **10.3.**

The seller and his representatives at the job site shall not be entitled to reach direct agreements debiting or encumbering the buyer with the end user.

### **10.4.**

A copy of any direct written correspondence between seller and the job site of the buyer conducted as a matter of urgency (letters, telegrams, fax, telex, e-mail messages) shall be sent to the head office of the buyer.

## **11. Passing of risk, acceptance test**

### **11.1.**

Unless otherwise agreed in writing, the deliveries shall be delivered CPT the place of destination indicated in the order. All trade terms shall be governed by the latest version of the Incoterms in force at the time the contract is signed. The seller shall bear the risk until reception of the goods by the buyer or authorized representatives of the buyer at the place of delivery specified in the order.

### **11.2.**

Once the complete system has been assembled and installed, the supplied machinery and equipment shall undergo test runs to determine whether they comply with the technical data and deliver the specified performance. In the event of a successful test run, the buyer may issue a preliminary acceptance test certificate; however, this shall not be viewed as a substitute for the final acceptance test report.



### 11.3.

The test run shall be followed by a performance verification test on the entire system, verifying that the deliveries of the seller comply with the performance guarantee. This shall be followed by a final acceptance test on the entire system performed by the end user. Following the successful completion of the acceptance test, the end user shall compile an acceptance test report, which shall also be deemed binding for the seller.

## 12. Liability for defect; performance guarantee

### 12.1. Scope of liability for defects

The design and material of the delivered item shall be state-of-the-art. At the passing of risk, the delivered item must have the agreed characteristics; if no characteristics have been agreed upon, it has to be suitable for the use specified in the contract. All deliveries and performances shall be in accordance with the required technical standards and regulations as well as with the latest safety and environmental regulations.

If a defect appears within six months from the passing of risk, it can be presumed that the item was defective already at the time of passing of risk – unless this presumption is incompatible with the nature of the matter or defect.

If the EC Machinery Directive dictates that the product requires a manufacturer's declaration or a declaration of conformity (CE), the seller shall send this separately. The seller shall take marking requirements into account.

In particular, the seller warrants/guarantees

- the use of new and faultless material,
- faultless design and manufacture,
- flawless functioning,
- the fulfillment of the agreed technical performance data,
- compliance with the quality and durability guarantees,
- that containers, apparatus/units and pipelines operating under pressure have been configured in accordance with the technical documentation provided in line with applicable standards and specifications in Germany, unless otherwise specified in the order.

The seller guarantees that all characteristics are in compliance with the plant and machinery parameters listed in the order documents and the contractual documents.

### 12.2.

The buyer shall only check the delivered items with regard to externally visible damages (e.g. packaging and transport damages) and externally recognizable deviations in identity and quantity. Such defects shall be reported promptly by the buyer. The buyer reserves the right to carry out further examination of the delivery items, where applicable during partial or final acceptance. Otherwise, the buyer shall notify defects within a reasonable period of time as soon as they are determined according to the circumstances of the proper course of business; insofar, the seller waives the objection for delayed notice of defects.

### 12.3. Limitation of claims under warranty

All claims under warranty shall be statute-barred 24 months after delivery of the goods/complete performance of the services, unless the delivered item has been designed for a building structure and caused its defectiveness. Besides, the legal regulations shall apply for all claims of the buyer, in particular all claims for damages and their limitation.



If the acceptance test is to take place at the buyer's plant, the successful completion of the final acceptance test on the entire system by the end user shall mark the beginning of the warranty period. In this case however, the seller shall be held liable for faults/defects for a maximum period of 36 months after arrival of the last part of the entire system at the place of destination in the event of the installation/start-up and acceptance being delayed for reasons caused by the buyer or the end user.

If the defective equipment needs to be repaired or replaced under the seller's liability and this has an adverse effect on the work required to install the system and perform the test run, or if it proves partly or completely impossible to operate the system correctly due to such repairs or spare parts deliveries, then the warranty period shall be prolonged by this amount of time accordingly.

For parts repaired within the warranty period, the warranty period shall start anew at the time at which the claims of the buyer under warranty have been fully met.

## **12.4. Correction of faults**

The buyer is entitled to the legal claims under warranty in full, without any restriction. In any case, the buyer has the right, at his discretion, to demand from the seller to correct the faults or to deliver a new item. As to the claim for subsequent performance, § 439 of the German Civil Code (BGB) shall apply. The buyer's right to claim damages, in particular the right to claim damages in lieu of a performance, shall be expressly reserved.

Correction of faults free of charge or exchange of unsuitable parts free of charge by the seller as part of this liability for defects includes the payment of all costs for material, freight, packaging, duty, dismantling, assembly, assembly staff, travel costs, expenses etc. by the seller.

After the exchange, the originally supplied defective parts replaced by new parts as part of this agreement shall be made available to the seller.

All costs incurred as a result of the return of defective or incorrect parts shall be borne by the seller.

## **12.5.**

Minor defects, which need to be corrected without delay and which do not require intervention on the part of the seller, shall be repaired by the buyer or a third party contracted by the buyer. The seller shall pay the usual market price for any such repairs; the same procedure applies should the seller agree to allow the fitters of the buyer to remove the defect.

If the seller does not respond to the notice of defect sent by the buyer within two working days, or if the seller does not begin to rectify the defect within 5 working days following the receipt of such notice, the buyer shall be entitled to take the necessary steps to remove the defect or have the defect removed by a third party at the cost of the seller. In such instances, the buyer's usual assembly rates shall apply.

The same shall apply in urgent cases which require immediate rework to be carried out by the seller in order to prevent impending, unreasonable high levels of damage, provided that the seller has been informed of the defect. The performance of fault correction work by the buyer shall not affect the seller's liability for defects in any way. The seller shall waive the objection to late notice of defects.

## **12.6. Exclusion of liability**

The seller shall not be held liable for accidents, damage and defective results which occur as a result of incorrect handling or excessive stress.

With normal wearing, certain defined wear parts are not subject to the liability for defects.



## 12.7. Performance guarantee

The seller guarantees that the machinery and equipment selected meet the end user's operating requirements and that the machinery and equipment are configured for long-life operation.

The seller guarantees that the machinery and equipment to be delivered and the local supplies specified by the seller form a fully functional piece of machinery, which delivers the agreed performance.

Should it become apparent that certain parts necessary to ensure the correct functioning of the entire system are missing which are not expressly listed as end user or the buyer supplies, the seller shall be obliged to additionally supply these parts on his own cost.

## 12.8. Right of recourse

If a claim is asserted by the customer of the buyer, § 478 of the German Civil Code (BGB) shall apply with regard to the buyer's recourse against the seller. In such a case, notwithstanding the provisions of section 12.3, the period of limitation shall commence at the earliest two months from the time at which the buyer has fulfilled the claims of his customer asserted against him, but not later than five years after the seller's delivery of the item in question to the buyer.

## 12.9. Retention of guarantee sum under warranty

Provided that no other amount has been agreed, 10 % of the total value of the order shall be retained to cover the buyer's warranty claims under the seller's liability for defects up to the end of the respective period. This amount is redeemable against a bank guarantee of the same amount following final acceptance; the validity of the bank guarantee shall be equivalent to the warranty period.

## 12.10. Spare parts

The seller shall undertake to supply spare parts at the usual market conditions for a duration of 10 years following the end user commissioning.

## 13. Product liability, indemnification, liability insurance cover

### 13.1.

As far as the seller is responsible for a damage to the product, he shall be obliged to indemnify the buyer for claims for damages of a third party on first demand, provided that the cause of damage is found in the seller's domain of control and organization and he is liable himself in his external relations.

### 13.2.

Within his liability for damages as defined in section 13.1, the seller shall also be obliged to indemnify the buyer for any expenditure arising from or in connection with a recall action by the buyer. The buyer shall inform the seller – as far as possible and reasonable – of the kind and scope of the measures envisaged and shall give the seller an opportunity to comment. This shall not affect any other legal claims.



### **13.3.**

The seller shall take out a product liability insurance with an insured lump sum of at least € 10 million for each case of personal injury/property damage. Should the buyer be entitled to any further claims for damages, these shall remain unaffected hereby.

## **14. Third-party rights**

### **14.1.**

The seller shall be held liable if there is an infringement upon third-party rights such as patent, licensing or other commercial/industrial property rights from his supplies, in particular from the machinery and equipment supplied by him. The same applies in the country of the end user.

### **14.2.**

If claims are made against the buyer by third parties due to an infringement upon property rights, the seller shall, on the first written demand, indemnify the buyer against such claims asserted by third parties against the buyer based on legal regulations.

### **14.3.**

The seller's obligation to indemnify the buyer relates to all expenditure and costs arising to or incurred by the buyer from or in connection with such claims by third parties. This shall also apply in the case of claims being based on foreign legal regulations, provided that the seller had initially been made aware of the country of final destination for the machines and equipment supplied.

### **14.4.**

The warranty period for such claims shall be ten years from the delivery of the goods.

## **15. Insurance, liability**

### **15.1.**

The seller shall guarantee the buyer sufficient insurance for the deliveries and services with respect to transport, assembly/installation, accident, operating and environment liability risks.

### **15.2.**

The staff of the seller shall have the requisite technical qualifications. The seller shall be fully liable for any damages caused by his staff, regardless of damage type. The buyer shall not be held liable for losses or damages to the job site equipment or the tools owned by the seller.



## 16. Retention of title, Buyer's supplies

### 16.1.

All materials and manufacturing aids provided by the buyer to enable the seller to execute the order (e.g. drawings, tools, models, and documents) shall remain the property of the buyer. They shall be returned to the buyer after fulfillment of the contract or completion of other works. The seller shall not have any rights of retention.

Machining or processing of such items shall only be for the buyer. The buyer shall automatically receive ownership rights for the new or modified item. In the event of further processing, amalgamating or combination with outside items, the buyer shall acquire joint ownership based on the value of his material (purchase price plus V.A.T.) in relation to the outside material at the time of further processing, amalgamating or combination. If the item of the seller is to be considered as the major item, the seller shall assign a proportionally joint ownership to the buyer in advance. The seller shall preserve the sole or joint ownership for the buyer.

### 16.2.

The seller shall bear the risk for accidental destruction and deterioration and shall undertake - free of charge - to keep in custody and separate from other items the material owned by the buyer and to mark this material.

These materials may not be given to third parties for security. The seller must use them exclusively for the above order. In the event of third party attachment, the seller shall inform the buyer immediately.

The seller shall undertake to insure the materials and manufacturing aids belonging to the buyer at their replacement value against damage caused by fire, water and theft at his own cost. This shall particularly apply to tools. The seller shall assign all claims for indemnification arising from the insurance to the buyer in advance. The buyer hereby accepts this assignment.

### 16.3.

Regardless of the production status, the materials provided by the buyer and the new items manufactured from or using this material as well as items which are jointly owned by the buyer may not be given to third parties for machining, processing or storage without the buyer's prior consent.

### 16.4.

The seller shall undertake to carry out in time, at his cost, all the necessary servicing and inspections as well as all maintenance and repair work on the tools belonging to the buyer. The seller shall inform the buyer immediately of any defects; if the seller fails to do so, the buyer's claims for damages shall remain unaffected.

### 16.5.

Tools shall become the buyer's property if the seller manufactures them especially for the execution of the purchase order or lets them be manufactured for the order and if the manufacturing costs are borne by the buyer or are covered by his payments.

### 16.6.

The buyer is entitled to check at any time whether the seller has fulfilled the obligations specified in this agreement (sections 16.1-16.5).





### **16.7.**

To cover the event of termination of the contract, the seller shall, in advance, give approval for the buyer to enter his factory premises and to collect any provided materials which have not yet been processed.

### **16.8.**

The buyer undertakes to release the securities he is entitled to inasmuch as the value that can be realized from the seller's securities exceeds the claims to be secured by a total of more than 10%, if request by the seller. The buyer is entitled to determine which securities are to be released.

## **17. Confidentiality**

### **17.1.**

The seller shall be obliged to treat all commercial or technical information and documents, both tangible or not, strictly confidentially. This includes illustrations, drawings, plans, samples, models, dies, matrices or calculations, regardless of whether the seller manufactures them especially for the execution of the order or lets them be manufactured for the order, following the specifications of the buyer.

Such information and documents must not be made accessible, disclosed, left or transmitted to third parties for viewing or use without an explicit consent of the buyer. The information and documents remain the buyer's exclusive property and may be used exclusively for manufacturing according to the order of the buyer, but for no other purposes. They may be copied or commercially used only with a prior consent of the buyer.

The obligation to maintain confidentiality shall also apply after the execution of the contract; it shall terminate as soon and inasmuch as the knowledge contained in such documents and information can be proven to be in the public domain.

### **17.2.**

On the buyer's request – or without such a request after execution of the contract – all commercial or technical documents and information received from the buyer, including any reproductions, shall be returned by the seller. If the seller has stored such documents and information in an electronic form, such data shall be permanently erased.

### **17.3.**

The buyer keeps all rights on all commercial or technical information transmitted to the seller, in particular the right of ownership and the copyright.

### **17.4.**

The seller may not use the products manufactured according to the commercial or technical documents and information for other projects or offer them to third parties. The same applies for products manufactured on specifications of the buyer or with tools of the buyer respectively tools especially manufactured for the buyer.

### **17.5.**

The seller shall be obliged to treat purchase orders or contracts of the buyer as trade secrets. The same applies to any associated commercial and technical details.



## 18. Termination/cancelation

### 18.1.

In the event it comes to be known that the economic situation of the seller has become unpropitious or has deteriorated after conclusion of the contract and the buyer comes to the conclusion that his claim for the fulfillment of the contract is in jeopardy, the buyer shall be entitled to ask for security, fixing an appropriate time limit for the fulfillment of his claim. In case of refusal, the buyer shall be entitled to terminate the contract with due regard to his expenditure for the non-fulfilled part of the contract. This shall also apply in the event of insolvency or the settlement proceedings being instituted with regard to the seller's property as well as in the event of suspension of payments (even if only temporary).

The buyer shall be entitled to cancel the whole contract if he is not interested in a partial delivery.

### 18.2.

Moreover, the buyer shall have the right of termination after an appropriate fixed period of time has elapsed ineffectually if the seller does not fulfill his obligations or does not fulfill them in conformity with the terms of the contract. The seller's contractual obligations include particularly the maintaining of confidentiality according to section 17. As to the claim for subsequent performance, § 323, section 2 of the German Civil Code (BGB) shall apply. Any claims for damages shall remain unaffected. Payments already received shall be returned to the buyer, including an interest of 5 percentage points over the respective prime rate.

### 18.3.

The buyer shall be entitled to a termination/cancellation of the contract if the contract between the buyer and the end user is rescinded or cancelled in any other way or if the end user does not meet his payment obligations. In such instances, the buyer shall pay all costs and expenditure incurred by the seller up to this point as can be proved; further claims shall be excluded.

## 19. Seller's subcontractors

The seller is not entitled to subcontract the order received from the buyer, either wholly or in part, without the prior written consent of the buyer. Any agreement in this regard does not relieve the seller of the obligation to ensure that selected subcontractors meet the necessary standards of quality and reliability or of his obligation to monitor the fulfillment of the order.

## 20. Advertising

The seller may only highlight his business links to the buyer in his advertising after prior consent in writing from the buyer.



## 21. Foreign trade legislation

The seller shall include the following details in offers and order confirmations:

- Indication whether the object of supply is subject to an export license and indication of the relevant list item number according to German export law,
- Indication of a possible listing of his product according to US-CCL and the corresponding list number,
- Indication whether the ordered goods are subject to an export license according to the EC Dual Use Ordinance No. 428/2009 from 27/08/2009 and the corresponding list item number,
- Statistical goods number,
- Weight of the good,
- Exporting country,
- Country of origin (Origin in terms of commercial and preferential law, changes in origin have to be announced immediately and unsolicited).

The seller guarantees that he has no direct or indirect business or other connections to terrorists, terrorist groups or any other criminal or anticonstitutional organizations. In particular, the seller shall ensure the implementation of EU Regulations 2580/2001 and 881/2002 as well as corresponding US-American and/or other corresponding regulations by means of appropriate organizational measurements – particularly by means of adequate software systems.

## 22. Compliance with the legal regulations concerning minimum wage

### 22.1.

The seller warrants that it, and all sub-contractors and vicarious agents appointed and employed by it, comply with all applicable minimum wage legislation and regulations on minimum conditions in accordance with the Minimum Wage Law.

### 22.2.

The supplier shall indemnify the buyer upon first demand against all claims from third parties (including social security institutions and financial authorities), which are based on a breach of its obligations under the Minimum Wage Law or on a breach of the obligations of subcontractors or vicarious agents, appointed by the supplier, under the Minimum Wage Law. This indemnification obligation applies both to civil liability and to fines imposed against the purchaser due to violations of the supplier or its subcontractors or vicarious agents, and also due to any legal costs arising in this context.

A violation of this guarantee or indemnification obligation entitles the purchaser to extraordinary termination of the assignment.

### 22.3.

The supplier is obliged to present to the purchaser upon first request a certificate in tax matters (clearance certificate) and/or evidence confirming compliance with the minimum conditions under the Minimum Wage Law. In justified cases, the purchaser is entitled to have the competent authorities verify compliance with the provisions of the Minimum Wage Law.



## 23. Validity, scope of application

### 23.1.

Should any provision of these conditions of purchase be or become ineffective, this shall not affect the legal validity of the remaining provisions.

### 23.2.

These conditions of purchase shall also apply in the case of spare parts orders for the machinery and equipment supplied by the seller.

## 24. Applicable law, place of jurisdiction

### 24.1.

Substantive German law shall apply to all legal dealings between the parties to the contract. However, this contract shall not be deemed to include any provisions of the Contracts for the International Sales of Goods (CISG) of the United Nations.

### 24.2.

Place of jurisdiction for all disputes between parties to the contract shall be the location of the buyer if the seller is a merchant, a legal entity or property under public law. However, the buyer is also entitled to take legal action against the seller at the courts presiding over the area in which his head office or branch office is located.

### 24.3.

If judicial/arbitration proceedings take place between the buyer and the end user with regard to the product supplied by the seller, the judgment passed shall also be considered binding with regard to the relationship between seller and buyer, provided that detailed procedure is agreed between buyer and seller.

## [Rev. 06] 25. Protection of data privacy

Regarding the course of business, both, buyer and seller shall store and process data received by electronic means in accordance with the requirements of German Data Protection law (BDSG) and/or General Data Protection Regulation (Directive 95/46/EC) respectively.