

1. Application, jurisdiction, applicable law

1.1 Unless they are amended or excluded with our express written consent, these terms and conditions apply to all present and future contracts, as well as all goods and services which are provided. The application of the terms and conditions of the contractual partner is expressly rejected. They will not apply even if, upon receipt by us, they are not expressly rejected once more. Our terms and conditions will be regarded as having been accepted at the latest on receipt of our goods or service by the contractual partner.

1.2 Our terms and conditions apply only in relation to companies as defined by § 14 BGB (German Civil Code), business people if the contract is related to the operation of their business enterprise, and legal entities or special funds under public law.

1.3 Our offers are provided without commitment. Agreements, in particular supplementary verbal agreements and assurances made by our sales staff, will only be binding if confirmed in writing by us.

1.4 The information, drawings, images, technical data, descriptions of weights, dimensions and performance which are provided in brochures, catalogues, circulars, advertisements, price lists or in the documents relating to a specific offer will only be binding if compliance with them has been expressly agreed. We retain rights of ownership and copyright in relation to these materials.

1.5 The laws of the Federal Republic of Germany will apply, to the exclusion of the United Nations Convention on International Contracts of Sale.

2. Liability

2.1 Other than damage to the goods which are the subject of the contract, we will accept liability for damage, irrespective of the legal grounds, only in the event of

- a) wilful intent,
- b) gross negligence on the part of our executive bodies or senior employees,
- c) culpable injury to life, limb or health,
- d) defects that we have maliciously concealed or defects the absence of which we have guaranteed,
- e) defects in the case of the goods supplied, if we are liable in accordance with product liability legislation for damage to persons or property in the case of privately used articles.

2.2 In the event of a culpable breach of material contractual obligations, we will also accept liability in the event of gross negligence of non-management employees and in the case of minor negligence; in the latter case, liability will be limited to the reasonably foreseeable damages typical to this type of contract.

Unless otherwise contractually agreed in individual cases, material contractual obligations are those obligations which enable the proper implementation of the contract and the performance of which the customer may rely on.

2.3 Any further claims are excluded.

3. Partial invalidity

If any of the provisions of these terms of sale are invalid in whole or in part, the remaining provisions will remain valid. Any invalid provisions will be replaced by the applicable statutory regulations.

4. Place of performance, place of jurisdiction

4.1 The place of performance for all our deliveries and the payment of the purchase price is 51491 Overath-Vilkerath.

4.2 The place of jurisdiction for all disputes arising from contracts is 51491 Overath-Vilkerath. We can also institute legal proceedings against the purchaser at the purchaser's own place of jurisdiction.

5. Prices

5.1 Our prices are quoted ex works, exclusive of packing, freight, shipping, insurance, VAT etc.

5.2 Our prices are based on cost structures at the time the contract is concluded. If by agreement the delivery will be more than four months after the conclusion of the contract and if in the meantime wages/salaries as determined by the applicable collective bargaining agreement for the metal industry in North Rhine Westphalia have risen by more than 3%, we will have the right to make the appropriate increase in the agreed prices in order to absorb these additional costs. The same will apply to any increase in the cost of materials.

6. Delivery periods, deliveries

6.1 Without prejudice to individual contractual agreements, indicated delivery periods will be regarded as approximate.

6.2 The delivery period will begin on the date of our confirmation of the order. This assumes, however, that all commercial and technical matters have been clarified and the purchaser has

fulfilled all the applicable obligations, such as obtaining the necessary official permits or certificates, or the payment of a deposit. If this is not the case, the delivery period will be extended accordingly, unless we are responsible for the delay.

6.3 Compliance on our part with the delivery period will be subject to our receiving our own deliveries correctly and by the agreed time. We will inform the purchaser as soon as possible in the event of an impending delay.

6.4 A delivery period will be regarded as having been met if the goods have left our works by the relevant date, or the purchaser has been informed that the goods are ready for shipping.

6.5 We will have the right to make part deliveries to a reasonable extent. Deliveries which are up to 10% above or below the agreed quantity will be permissible.

7. Shipping, transfer of risk

7.1 In the absence of a specific agreement we will decide on the transport route and the means of transport, without accepting responsibility for selecting the cheapest or fastest options.

7.2 The risk will be transferred to the purchaser when the goods are handed to the freight forwarder or carrier.

7.3 If the goods are ready for shipment and if their dispatch or acceptance is delayed for reasons for which we are not responsible, the risk will be transferred to the purchaser as soon as we notify the purchaser that the goods are ready for shipping.

8. Terms of payment, special features of cutting systems

8.1 Unless otherwise agreed, payment must - subject to Section 8.2 - be implemented without deduction within the agreed period allowed for payment. If no period for payment has been agreed, the invoice amount will be payable immediately after we have made the delivery. We reserve the right to supply goods only against payment in advance.

8.2 In the case of the purchase and supply of cutting systems, 30% of the invoice amount will be payable with order, 60% when the purchaser is notified that the goods are ready for shipping, and 10% after customer acceptance of the installation. Please note that the installation is implemented by the purchaser and we only provide support.

8.3 If the purchaser is in arrears of payment we will charge the statutory interest on arrears. This is without prejudice to the assertion of further claims for damages.

8.4 The purchaser will only have the right to withhold payment or deduct counterclaims if such counterclaims are not disputed or have been confirmed by a court of law.

8.5 If the purchaser fails to take delivery of goods which have been purchased, or if we can claim compensation on the grounds of nonfulfillment, the claim for compensation will amount to at least 5% of the purchase price, without any obligation on our part to provide proof of damage. The purchaser will have the right to provide proof that any claimed damage was either non-existent or much lower than claimed.

9. Reservation of title

9.1 All goods supplied remain our property until the fulfilment of all our claims, regardless of legal grounds, including future or conditional claims and those from contracts which are concluded simultaneously or subsequently.

9.2 Until the transfer of title the purchaser is under the obligation to treat the purchased goods with due care. In particular, the goods must be insured at their new value by the purchaser at its own expense against theft, fire and water damage. If maintenance or inspection operations are required, these must be implemented in good time by the purchaser at its own expense.

9.3 Any processing of the reserved goods is implemented on our behalf as the manufacturers within the meaning of §950 BGB, but without placing us under any obligation. The processed goods are classed as reserved goods within the meaning of Section 9.1. If the reserved goods are processed, combined and/or mixed with other goods by the purchaser, we will be entitled to ownership of the resulting goods in the proportion of the invoice value of the reserved goods to the invoice value of the other goods which are used. If our ownership rights are dissolved by the combination or mixing of the goods, the purchaser hereby assigns to us its property rights in the new goods to the extent of the invoice value of the reserved goods, and will take care of the goods free of charge on our behalf. The resulting co-ownership rights will be classed as reserved goods within the meaning of Section 9.1.

9.4 The purchaser may only sell the reserved goods in the course of normal business operations at its normal terms and conditions and as long as it is not in arrears of payment, provided that the claims arising from such sale are assigned to us in accordance with the following Sections 9.5 to 9.7. The purchaser will not be entitled to dispose over the reserved goods in any other way.

9.5 The claims of the purchaser arising from the sale of the reserved goods, which also covers the fulfilment of a contract for work or work and materials, are hereby assigned to us. We accept the assignment. In the sale of goods to which we have a co-ownership share in accordance with Section 9.3, the assignment will be to the level of this co-ownership share.

9.6 Until revoked by us, which we will have the right to do with any time, the purchaser will have the right to collect its claims arising from the onward sale. At our request the purchaser will have the obligation to inform its customer of the assignment to us – unless we do this ourselves – and to provide us with the information and documents we require in order to collect our claim.

9.7 The retention of title in accordance with the above provisions will remain in place even if our individual claims are included in a current invoice and the balance has been drawn up and accepted.

9.8 In the event of a breach of contract on the part of the purchaser, in particular arrears of payment, we will – after providing a written warning – have the right to take back the goods supplied and the purchaser will be obliged to return them.

9.9 Our retention of title is restricted to the extent that on full payment of all claims from the business relationship the ownership of the reserved goods will immediately be transferred to the purchaser, and the purchaser will be entitled to the assigned claims.

9.10 The purchaser must inform us without delay – while providing the necessary documents to enable intervention on our part – about any compulsory enforcement measures taken by third parties in relation to the reserved goods, our co-ownership share or claims assigned to us or other securities. This also applies to any other factors which could affect our claims. If the third party is not in a position to refund the cost of legal proceedings which are settled either in court or out of court, for example in accordance with § 771 ZPO or § 805 ZPO or the like, the purchaser will be liable for whatever costs we incur.

9.11 If the purchaser – in spite of being in arrears and receiving a further demand for payment – fails to pay our invoice either partly or in full, or if the financial situation of the purchaser deteriorates, we will have the right to withdraw from the contract and demand the immediate return of any goods supplied.

9.12 If the value of the existing securities exceeds our secured claims in total by more than 10%, at the request of the purchaser we will be obliged to release securities to this extent at our own discretion.

10. Models, tools, moulding equipment

10.1 If models, tools and other moulding equipment (referred to below as the “tools”) are produced or obtained by us on the instructions of the purchaser, we will invoice a proportion of the cost. The tools will remain in our possession, and we will not be obliged to release them to the purchaser. We have a right of retention to the tools on the grounds of all our rights arising from the business relationship with the purchaser.

10.2 If the purchaser makes tools available to us, it will be liable for the correct design and construction of the tools for the relevant purpose, but we will have the right to modify them. We will not be under an obligation to check that the tools which are made available match the drawings which are provided.

10.3 The purchaser will be responsible for the cost of maintaining, modifying and replacing the tools.

10.4 If we supply goods on the basis of drawings or other information provided by the purchaser and if this infringes the protected ownership rights of third parties, the purchaser will indemnify us against all claims on the part of such third parties.

10.5 Any drawings and documents we make available to the purchaser, together with any suggestions relating to the optimum design and manufacture of the products, must not be passed on to third parties, and we can demand their return at any time. We reserve ownership rights and copyright to the images, drawings and other documents provided by us.

11. Warranty

For legal and material defects we provide the following warranty, to the exclusion of further claims and subject to the provisions of Section 2. Material defects

11.1 Any parts which prove to be defective as a result of circumstances arising before the transfer of risk will – at our discretion – be either repaired or replaced by parts without any fault. If any defect is identified, we must be notified immediately, or at the latest within a period of two weeks after the transfer of risk. Any part we replace becomes our property.

11.2 After consultation with us, the purchaser must give us the necessary time and opportunity to implement all the improvement measures and replacement deliveries which seem necessary to us. If this is not done we will be exempted from any liability for the consequences. The purchaser will only have the right to correct the defect itself or have it corrected by third parties and to demand compensation for the cost involved in urgent cases where operational safety is threatened or to avoid unreasonably serious damage.

11.3 Of the direct costs arising from the corrective operations or replacement delivery we will – if the complaint proves to be justified – be responsible for the costs of the replacement parts and shipping. We will also be responsible for the cost of dismantling and installation, together with the cost of any necessary provision of fitters and support personnel, together with their travel costs, unless this leads to unreasonable expenditure on our part. This is conditional on the fact that the equipment is located at the delivery address of the purchaser and the remedial operations can be carried out without obstacles.

11.4 Within the scope of the statutory regulations the purchaser has the right to withdraw from the contract if we – taking into account the statutory exceptional cases – fail to carry out the corrective work or provide a replacement delivery to remedy the defect within a reasonable subsequent period. If the defect is only a minor one, the purchaser will only have the right to a reduction in the purchase price. In other respects the right to a reduction in the purchase price is excluded.

11.5 No warranty is provided in the following cases in particular:

Failure to follow the operating instructions and/or maintenance schedule, unsuitable or incorrect application, faulty installation or commissioning by the purchaser or third parties, natural wear and tear, incorrect or negligent treatment, in particular excessive strain, unsuitable operating materials, chemical, electrochemical or electrical influences etc.. We provide no warranty for parts which are subject to wear and tear in the course of normal use of the equipment and/or regularly have to be replaced by the user, such as air filters, seals, membranes, hoses etc.

11.6 If the purchaser or a third party implements technically improper repair work we will not be responsible for the consequences. The same applies to any modification of the goods supplied without our prior approval.

11.7 Any characteristics which are provided with tolerances, for example such as data provided in catalogues and operating instructions or advice and information offered by our personnel, do not represent guaranteed features. In other respects they are subject to the kind of divergences and changes related to technical developments. Our instructions for application have been drafted with typical care for the industry, but they do not release the purchaser from the obligation to check the equipment to ensure its suitability for the intended purpose.

11.8 Legal defects

If the use of the goods supplied leads to an infringement of protected industrial property rights or copyright, we will at our expense provide the purchaser with the right of further use, or modify the goods to a reasonable extent in order to ensure that the infringement of protected rights is remedied. If this is not possible under economically viable conditions within a reasonable period of time, the purchaser will have the right to withdraw from the contract. Under the above conditions we will also have a right to withdraw from the contract.

11.9 Subject to Section 2.1, the obligations described in Section 11.8 cover every aspect of breaches of protected industrial rights or copyright. They will only apply if

- the purchaser informs us without delay about any claims relating to protected industrial rights or copyright,
- the purchaser supports us to a reasonable extent in our defence against claims made against us or enables us to carry out the modification activities described in Section 11.8,
- we retain the right to take all defensive measures, including out-of-court settlement,
- the legal defect does not result from instructions received from the purchaser and
- the infringement was not caused by the fact that the purchaser has modified the goods without our approval or used them in a way which was not contractually agreed.

12. Statutory limitation period

12.1 The period of limitation for claims and rights in relation to defects on the part of our goods and services will – regardless of legal basis – be one year from delivery.

12.2 The period of limitation in accordance with Section 1 above also applies to all claims for damages asserted against us in relation to a defect, regardless of the legal basis of the claim. If there are claims of any kind against us which are not connected with such a defect, they will also be subject to the above limitation period.

12.3 The limitation period in accordance with Section 1 will not apply in the following cases:

- a) in the event of wrongful intent or gross negligence, or if the defect has been maliciously concealed;
- b) in the event of injury to life, limb, health or liberty or claims under product liability legislation, grossly negligent breaches of obligations or breaches of material contractual duties. “Material contractual obligations” are those obligations which enable the proper implementation of the contract and the performance of which the customer may rely on.

13. Warranty

Declarations made by us in connection with this contract (description of features, reference to DIN standards etc.) do not represent the assumption of a warranty. The assumption of such a warranty requires an express written declaration on our part.