

General terms and conditions of delivery and payment • E. Wittmann machines & tools

1. General / Scope of application

- 1.1 Our terms and conditions of delivery and payment shall apply exclusively. We do not accept any Buyer's terms and conditions of delivery and payment contrary hereto or deviating herefrom, or relating to matters which are not regulated in our terms and conditions of delivery and payment unless we have expressly agreed in writing. Our terms and conditions of delivery and payment shall also apply if we effect the delivery to the Buyer without reservation in full awareness of such contrary or diverging Buyer's terms and conditions or relating to matters not laid down herein.
- 1.2 All agreements which are made between us and the Buyer for the purpose of performing a contract are put into writing in the contract and these conditions of delivery and payment.
- 1.3 Our terms and conditions of delivery and payment shall only apply to an entrepreneur as defined in Article 14 BGB (German Civil Code).
- 1.4 Our terms and conditions of delivery and payment shall also apply to repeat orders.

2. Offer / Offer documents

- 2.1 Our offer shall not be binding, unless we have made a deviating agreement.
- 2.2 Illustrations, drawings, cost estimates, and other documents relating to products, applications or projects shall remain our property and shall be subject to our copyright even if we place them at the Buyer's disposal. Without our express prior written consent, they may be neither reproduced nor made accessible to third parties.

3. Prices / Terms of payment

- 3.1 Unless otherwise agreed, our prices shall be quoted „ex works“ (Incoterms 2000), exclusive of packing and transportation costs. These shall be charged for separately.
- 3.2 Statutory value-added tax is not included in our quoted prices. It will be shown separately in the invoice in the statutory amount applicable at the invoicing date.
- 3.3 Discounts may be deducted only by special written agreement.
- 3.4 Unless otherwise agreed, the purchase price shall be due for payment net (without any deduction) within 30 days of the date of the invoice. Should the Buyer fail to pay on due date, we are entitled to charge default interest at a rate 8% higher than each published base rate (Basiszinssatz, Article 247 BGB (German Civil Code)).
- 3.5 For tools made to drawings, special designs or projects, payment shall be made as follows:
 - 1/3 advance payment upon receipt of the acknowledgement of the order;
 - 1/3 upon receipt of the delivery;
 - 1/3 fourteen (14) days after acceptance
- 3.6 The Buyer is only permitted to offset against our claims if its counterclaims have been confirmed by final court judgement, are uncontested or acknowledged by us. The Buyer may exercise a right to withhold payment only if its counterclaim is based on the same contractual relationship.

4. Delivery / Delivery time

- 4.1 Unless otherwise agreed, delivery shall be effected ex works (Incoterms 2000) place named in our offer or acceptance or, if no place of destination is indicated in our offer/acceptance, ex works Spangenberg.
- 4.2 The time of delivery we have specified or agreed shall not commence before all technical questions have been clarified.
- 4.3 Furthermore, the fulfilment of our delivery obligation shall be conditional upon the timely and proper fulfilment of the Buyer's obligations, in particular adherence to the agreed terms of payment. We reserve the defense of non-performance of the contract.
- 4.4 Should the Buyer be in default of acceptance or infringe other obligations to cooperate, we are entitled to demand compensation to this extent for the loss or damage we have incurred, including any additional expenses. The right to claim higher damages is reserved.
- 4.5 If the conditions set forth in Article 4.3 are fulfilled, the risk of accidental loss, destruction or deterioration of the purchased goods passes to the Buyer at the date of default of acceptance or default of the debtor.
- 4.6 If failure to make delivery by the agreed date is due to force majeure, e.g. mobilization, war, riot or similar events such as strikes or lockouts, the delivery period shall be extended by the duration of the events causing the delay, insofar as it can be proved that these obstacles affect completion or delivery more than slightly. This shall also apply if such circumstances occur with our suppliers.
- 4.7 We shall be released from our delivery obligation if the correct goods ordered for performing the contract have not been delivered to us in due time.
- 4.8 Partial deliveries are permitted to an acceptable extent.
- 4.9 Unless otherwise agreed and if it is acceptable for the Buyer in each individual case, we shall be entitled to exceed or go below the agreed quantity to be delivered by $\pm 10\%$. The Buyer shall then pay for the quantity actually delivered.
- 4.10 We shall be liable for delays in delivery in accordance with statutory provisions if the respective contract of sale specifies fixed-date delivery as defined by Article 361 BGB (German Civil Code) or Article 376 HGB (German Commercial Code).
- 4.11 We shall also be liable in accordance with statutory provisions if the delay in delivery is caused by an intentional or grossly negligent breach of contract for which we are responsible. We shall also be held responsible for a fault on the part of our representatives or vicarious agents.
- 4.12 If the delay in delivery has been caused merely by a simple fault and there is no mandatory liability for injury to life, body or health, our liability for loss or damage caused by delays shall be limited as follows: for each completed week of delay, the Buyer may demand 0.5 per cent of the price for the part of the delivery that could not be put into useful operation due to the delay, but not more than 5 per cent altogether. This does not entail a change in the burden of proof to the prejudice of the Buyer. The Buyer's statutory right to rescind the contract shall remain unaffected.
- 4.13 If delivery is delayed on grounds for which the Buyer is responsible, the Buyer may be charged for storage to the amount of 0.5 per cent of the price of the goods to be delivered for each month commenced, but not more than 5 per cent altogether. After expiry of a reasonable period of grace, we shall have the right to dispose otherwise of the goods to be delivered and to make delivery to the Buyer at a later date. The contracting parties shall be at liberty to furnish proof of higher, lower or no storage costs. The statutory rights to rescind the contract and to claim for damages are not affected.

5. Passing of risk

Unless otherwise agreed, delivery shall be deemed agreed „ex works“ (Incoterms 2000), even in cases where we have taken out transport insurance for shipment to the German border at our expense.

6. Defects

For defects, we shall be liable as follows:

- 6.1 The Buyer agrees with us that if there is entitlement to subsequent performance (repairs or new delivery), the less expensive of the two possibilities is to be selected, provided that the Buyer suffers no disadvantage thereby.
- 6.2 Claims for defects shall be subject to a limitation period of twelve (12) months from the date of passing of risk (Paragraph 5). This shall not apply in so far as pursuant to Article 438 para. 1, clause 2 BGB (Buildings and objects used in buildings), Article 479 para. 1 BGB (Right of recourse), Article 634 a BGB (Construction defects) and Article 438 para. 2 BGB (Fraudulent intent) longer periods are provided for.
- 6.3 The Buyer shall notify us immediately in writing of defects, but at the latest within seven days after performance (obvious defects) or the date of discovering the defect. Otherwise claims based on defects will be excluded.
- 6.4 In the event of a notice of defects, the Buyer may withhold payments to an amount which is reasonably commensurate with the defects which have occurred. The Buyer may withhold payments only if a notice of defects is justified beyond any doubt. If a notice of defect is not justified, we are entitled to compensation from the Buyer for the expenses we thereby incurred.
- 6.5 First we shall always be given the opportunity to provide subsequent performance within a reasonable period of time.
- 6.6 Should subsequent performance fail, the Buyer may rescind the contract or reduce the price without prejudice to any claims for damages that it may have.

- 6.7 There is no entitlement to claims based on defects due to natural wear and tear or to damage that occurs after the passage of risk as a result of incorrect or negligent handling, excessive strain, unsuitable working materials, or due to special external influences which were not assumed in the contract. Should the Buyer or third parties improperly perform changes or repairs, no claims based on defects shall exist for these or for any consequential loss or damage resulting therefrom.

- 6.8 Buyer's claims for expenses necessary for the purpose of subsequent performance, particularly transport, tolls, labour and material costs, are excluded if expenses increase because the delivered goods have subsequently been brought to a place other than the Buyer's place of business, unless such relocation is required for the use for which the goods are intended.

- 6.9 The Buyer's statutory rights of recourse against us shall exist only in so far as the Buyer has made no agreement with its customer exceeding the claims for defects allowed by German law.

- 6.10 Paragraph 8 shall apply to claims for damages. Claims over and above these claims based on defects other than those regulated in this Paragraph or in Paragraph 8 are excluded.

7. Industrial property rights and copyrights, defects of title

Unless otherwise agreed, we are obligated to effect delivery free of thirdparty industrial property rights and copyrights (hereinafter referred to as „industrial property rights“) only with respect to the country where delivery is made. Should a third party assert justified claims against the Buyer for an infringement of industrial property rights by deliveries effected by us and used as stipulated in the contract, we shall be liable to the Buyer within the period of time set forth in Par.6.2 as follows:

- 7.1 At our option and at our expense, we shall either acquire the right to use the deliveries concerned, or modify them so that the industrial property right is no longer infringed, or replace them. Should this prove impossible to do on reasonable terms, the Buyer shall have the statutory right to rescind the contract or to reduce the purchase price. Our obligation to pay damages shall be in accordance with Par. 8.

- 7.2 The above-mentioned obligations shall exist only if the Buyer informs us immediately in writing of the claims asserted by the third party, has not acknowledged infringement, and all defensive measures and settlement negotiations are reserved to us. Should the Buyer cease to use the delivered goods in order to reduce damages or for other important reasons, it shall point out to the third party that cessation of use cannot be construed as an acknowledgement of an infringement of industrial property rights.

- 7.3 The Buyer shall have no claims in so far as it is responsible for an infringement of industrial property rights.

- 7.4 Furthermore, Buyer's claims are excluded in so far as the infringement of an industrial property right has been caused by the Buyer's special instructions, by an application not envisaged by us, by a modification of the delivered goods by the Buyer or through use together with products not delivered by us.

- 7.5 In the event of infringements of industrial property rights, the provisions of Paragraph 6.4, 6.5 and 6.9 shall apply accordingly to the claims of the Buyer regulated in Paragraph 7.1.

- 7.6 More extensive claims on the part of the Buyer or claims against us or against our vicarious agents based on defects of title other than those regulated in this Par. 7 are excluded.

8. Overall liability

- 8.1 We shall be liable for damages and for the refund of futile expenditure within the meaning of Article 284 BGB (hereinafter referred to as „indemnification“) on grounds of defective delivered goods or services, or on grounds of a breach of any contractual or non-contractual obligation, in particular on grounds of tort, only in cases of intent or gross negligence. The above limitation of liability shall not apply in cases of injury to life, body or health pursuant to our taking over a warranty or procurement risk, a breach of essential contractual obligations or liability pursuant to the Produkthaftungsgesetz (German Product Liability Act).

- 8.2 Damages on grounds of violation of material contractual obligations (cardinal duties) shall be limited to damages for such loss or injury as must have been foreseeable under the circumstances at the time of execution of the contract (loss or injury typical for the type of contract), provided that there was no malicious intent or gross negligence, and that it does not involve injury to life, body or health, or the taking over of a warranty or a procurement risk.

- 8.3 All limitations of liability shall apply to the same extent to vicarious agents.

- 8.4 The foregoing provisions shall not bring about a change of the burden of proof to the prejudice of the Buyer.

9. Reservation of title

- 9.1 We reserve title in the delivered goods (reserved goods) until all claims against the Buyer due to us under the business relationship have been satisfied. If the value of all security interest due to us against the Buyer exceeds the amount of all secured claims by more than 10%, then, at Buyer's request, we shall release a corresponding part of the security interest.

- 9.2 As long as title is reserved, the Buyer shall neither pledge the goods nor assign them by way of security. Resale shall be permitted only to resellers in the ordinary course of their business and only on condition that the reseller receives payment from its customer or stipulates that title shall not pass to the customer until it has satisfied its payment obligations.

- 9.3 In the event of attachments, seizures or other disposals or interventions on the part of third parties, the Buyer shall notify us immediately so as to permit us to take legal action pursuant to Article 771 ZPO (German Code of Civil Procedure). In so far as the third party is not in the position to reimburse us for the judicial and non-judicial costs of a legal action pursuant to Article 771 ZPO, the Buyer shall be liable for the loss we have sustained.

- 9.4 The Buyer shall handle the purchased goods with care. In particular, it shall insure them sufficiently at their replacement value against damage by fire, water and theft at its own expense. Should maintenance and inspection work be necessary, the Buyer shall carry this out in due time at its own expense.

- 9.5 If the Buyer is in breach of its obligations, in particular if it is delay in payment, we are entitled to rescind the contract and to recover the goods. The Buyer has an obligation to return the goods. The recovery of the goods and/or the assertion of the reservation of title shall not require us to rescind the contract. Such actions or an attachment of the reserved goods by us shall not be deemed as a rescission of the contract, unless we have expressly stated this to be the case.

- 9.6 If the Buyer resells the purchased goods in the ordinary course of business, it hereby assigns to us all claims to an amount corresponding to the total invoiced amount (including VAT) of our payment claim, due to it from the resale against customers or third parties, regardless of whether the purchased goods have been resold unprocessed or after processing. Even after the assignment, the Buyer shall remain authorized to collect this claim. This shall not affect our right to collect the claim ourselves. However, we undertake not to collect the claim as long as the Buyer meets its obligations to pay from the proceeds received, does not default in payment and, in particular, no petition to institute insolvency proceedings has been filed and the Buyer has not ceased to make payments. Should this be the case, however, we may require the Buyer to disclose the assigned claims and the names of the debtors to us, to provide all the information needed for collection, to hand over the pertinent records, and to inform the debtors (third parties) of the assignment.

- 9.7 Processing or transformation of the goods bought by the Buyer shall always be deemed effected on our behalf. If the purchased goods are processed with other goods not owned by us, we shall acquire coownership of the new product in the proportion of the value of the purchased goods (total invoiced amount including VAT) to the other processed goods at the time of processing. For the rest, the product created through processing shall be subject to the same provisions as apply to purchased goods delivered with reservation of title.

- 9.8 If the purchased goods are inseparably mixed with other goods which are not our property, we shall acquire a share of property in the new product in the same proportion as the value of the purchased goods (total invoiced amount including VAT) has to the value of the other mixed products at the time of mixing. Should the mixture be effected in such a manner that the Buyer's goods are to be regarded as the main goods, it shall be deemed agreed that the Buyer shall assign co-ownership to us on a pro rata basis. The goods thus created in which we hold sole or joint property shall be held by the Buyer in safekeeping on our behalf.

10. Place of performance, jurisdiction, applicable law

- 10.1 For all rights and obligations resulting from our deliveries and services, the domicile of our company shall be the place of performance for both parties.

- 10.2 In transactions with entrepreneurs, the Amtsgericht (local court) Melsungen is agreed to be the place of jurisdiction for legal actions falling within the subject-matter jurisdiction of Amtsgerichte (local courts). We shall have the optional right to take legal action at the Buyer's domicile.

- 10.3 The contractual relationship shall be subject to the substantive law of the Federal Republic of Germany without giving effect to its conflict of laws principle.

- 10.4 The data provided by the Buyer shall be stored and processed by means of EDP in so far as this is permissible under Articles 28, 29 of the Bundesdatenschutzgesetz (BDSG, German Federal Data Protection Act).