

## **General Terms and Conditions of Sale, Delivery and Payment of**

**Möhlings GmbH & Co. KG,**

**Maschinentechnik Pretzschendorf GmbH**

**Umformtechnik “Grünes Herz” GmbH & Co. KG**

**(as of 02/2019)**

### **Section 1 General Provisions – Scope**

- (1) Our terms and conditions of sale, delivery and payment (hereinafter referred to as “Conditions of Sale”) apply exclusively. We will not accept any conditions of sale of the customer which are in conflict with, or deviate from, our conditions unless we have expressly agreed to their applicability in writing. Our Conditions of Sale also apply if we effect delivery to the customer without reservations even though we may be aware of conditions of the customer which are in conflict with our conditions or deviate from them.
- (2) Any and all agreements concluded between ourselves and the customer with the purpose of executing this Agreement are set out in writing in this Agreement.
- (3) Our Conditions of Sale only apply to entrepreneurs within the meaning of section 310 subsection 1 of the German Civil Code (“Bürgerliches Gesetzbuch“ / “BGB“).
- (4) Our Conditions of Sale also apply to all future transactions with the customer.

### **Section 2 Offer – Offer Documents**

- (1) If the order qualifies as an offer within the meaning of Section 145 of the German Civil Code, we may accept it within 2 weeks.
- (2) We hereby reserve all applicable property rights and copyrights to any images, drawings, calculations and other documents. This also applies to any written documents designated as „confidential“. Prior to disclosing them to any third parties, the customer requires our express written approval.

### **Section 3 Prices – Terms of Payment**

- (1) Unless otherwise stipulated in the order confirmation, our prices are quoted “ex works”, plus packaging, which is invoiced separately. We hereby reserve the right to change our prices in an appropriate manner should any cost reductions or cost increases occur after having concluded the contract, due to, including (but not limited to) collective agreements or material price fluctuations. We will furnish pertinent evidence at the customer’s request.
- (2) Our prices do not include the statutory value-added tax; the value-added tax is stated in the invoice separately at the applicable rate at the date of the invoice.
- (3) Deduction of a cash discount requires a separate written agreement.
- (4) Unless otherwise provided for in the order confirmation, the purchase price is net (without deductions) and payable within 30 days from the invoice date. The statutory regulations with respect to the consequences of a payment default apply.

(5) The customer is only entitled to set off amounts if its counterclaims are established with legal force, are undisputed or recognised by us or if its counterclaims are in a relation of mutuality (so-called synallagmatic claims) with the principal contractual claims. Only if any of the aforementioned conditions applies will the customer be entitled to exercise a right to refuse performance.

#### **Section 4 Delay in Delivery – Delivery Quantity – Impossibility of Performance**

- (1) The delivery period specified by us will not commence until all technical questions have been clarified.
- (2) The fulfilment of our delivery obligation is subject to the timely and proper performance of the customer's obligations. We reserve the right to raise the defence of non-performance of the contract.
- (3) We are entitled to make partial deliveries to the extent reasonably acceptable by the customer.
- (4) Production-related larger or smaller deliveries are permitted within a tolerance of 10% of total order quantity.
- (5) If the customer is in default of acceptance or otherwise culpably infringes cooperation obligations, we are entitled to claim damages for the resulting prejudice incurred by us, including reimbursement of any additional expenses. Assertion of any further claims remains reserved.
- (6) If any of the conditions set out in subsection (5) hereinabove is met, the risk of accidental destruction or accidental deterioration of the purchase item will be transferred to the customer at the time at which the customer falls in default of acceptance or of payment.
- (7) If – for reasons we are responsible for – we are either in default or the performance of the delivery proves impossible as provided for in Section 275 subsection 1 of the German Civil Code (“Bürgerliches Gesetzbuch“ / “BGB“), or if we are entitled to refuse performance in accordance with section 275 subsections 2 and 3 of German Civil Code (“Bürgerliches Gesetzbuch“ / “BGB“), we can be held liable exclusively as provided for in Section 8 of these Conditions of Sale. In cases of ordinary negligence, the customer will, in addition, be entitled to demand a lump-sum compensation for delay amounting to 0.5% for each full week of delay, however, to a maximum not exceeding 5% of the value of the part of the delivery that cannot be used or cannot be used in accordance with the contract due to the delay. If we fall into default, the customer will nevertheless be **entitled to set a reasonable extension** period and, following unsuccessful expiry of the extension period, the customer can withdraw from the contract or claim damages in lieu of performance.
- (7) The liability limitations stipulated in Section (7) hereof do not apply to transactions for deliveries by a fixed date as set out in section 286 subsection 2 no. 4 of the German Civil Code (“Bürgerliches Gesetzbuch“ / “BGB“) or section 376 of the German Commercial Code (“Handelsgesetzbuch“ / “HGB“).

#### **Section 5 Delivery Obligation – Reservation of Availability of Supplies – Force Majeure**

- (1) We will not accept an obligation to perform delivery without a binding obligation on the part of the customer that the customer will take and accept delivery, unless otherwise agreed upon on a case-by-case basis. Supply to the customer, even over an extended period of time, will not create a delivery obligation for the future unless expressly agreed upon otherwise. In particular, the customer's unchallenged receipt of a delivery forecast or of comparable documents will not create a delivery obligation for us.
- (2) If, on a case-by-case basis, we have accepted an unlimited delivery obligation without establishing a total delivery quantity (permanent delivery contract), we will be entitled to ordinary termination with a notice period of three months. Conversely, the customer is also entitled to exercise this right to termination if it has accepted an unlimited purchase obligation without a total delivery quantity being established.
- (3) The sale and delivery of our goods are subject to correct and timely supply to ourselves.

(4) In the event of force majeure and other obstacles to delivery that we could not foresee and which are not attributable to us, including industrial action, raw material shortage, operational malfunctions, transportation obstacles and official measures (including those affecting our suppliers), we will be entitled to extend the delivery time by the duration of the obstacle to performance. Should a delivery date be delayed by more than eight weeks due to the interference, either party will have the right to rescind the contract. We will immediately inform the customer of the unavailability or delayed availability of the delivery item and, in the event of contract rescission on our part, we will without delay refund the consideration paid by the customer.

#### **Section 6 Transfer of Risk**

- (1) Unless stated otherwise in the order confirmation, the delivery will be agreed to be “ex works”.
- (2) The risk of accidental destruction or accidental deterioration will be transferred to the customer upon dispatch even in case we have accepted the shipping costs or other additional services or if a partial delivery is made.
- (3) If the customer so requests, we will take out transport insurance to cover the delivery; the customer is obliged to bear any costs therefor.

#### **Section 7 Claims for Lack of Conformity (Statutory Warranty) and Notice of Non-Conformity (Complaints)**

(1) Assertion of claims for non-conformity by the customer is subject to the customer’s proper fulfilment of its inspection and notification duties, as laid down in section 377 of the German Commercial Code (“Handelsgesetzbuch“ / “HGB“). Notwithstanding the statutory inspection and notification duties, notice of non-conformity must be given no later than seven (7) days from the customer’s receipt of the goods. As a matter of principle, notice of non-conformity must be given to us in writing.

(2) In case the customer intends to install the goods into another object or attach the goods to another object, the customer is obliged to examine the goods after delivery without delay with regard to the characteristics relevant for installation or attachment, as the case may be, as well for subsequent use of the goods, and the customer must notify us in text form of any non-conformities of the goods without delay if and to the extent that examination of the said characteristics is reasonably practicable at that point in time taking into account the nature and quality of the purchase item. In case the customer should fail to notify us of any non-conformities detected in respect of characteristics defined in Sentence 1 hereinbefore although inspection would have been reasonably practicable for the customer, or if the customer fails to notify us of any such the non-conformities in due course, the purchase item will be deemed accepted. In this case, the customer cannot assert any rights in respect of any such non-conformities.

(3) In case the customer, in the event of an installation of the goods into another object or attachment of the goods to another object, should fail to inspect the exterior and interior characteristics of the purchase item although these characteristics are inspectable with reasonable effort prior to installation or attachment, as the case may be, and although these characteristics are relevant for installation or attachment as well for the subsequent intended use of the purchase item, this omission will be deemed gross negligence within the meaning of section 439 subsection 3 as well as section 442 subsection 1 sentence 2 of the German Civil Code (“Bürgerliches Gesetzbuch“ / “BGB“).

If this case applies, the customer will be entitled to assert any rights in relation to these characteristics only if the non-conformity was fraudulently concealed by us or if we have given a guarantee for a specific quality of the goods.

(4) If the purchase item exhibits a non-conformity, we will be entitled to render subsequent performance either by remedying the non-conformity or by delivering a conforming new item, at our discretion. If we decide to

remedy the non-conformity, we will be obliged to bear all expenses incurred for the purpose of remedying the non-conformity, including, but not limited to, transport, travel, labour and material costs, to the extent that these expenses are not increased by the fact that the purchase item was moved to a location different from the customer's address or different from any other contractually agreed-upon location, as the case may be, unless relocation of the purchase item is in accordance with its contractually stipulated use.

(5) If the customer has installed a purchase item that exhibited a non-conformity upon risk transfer into another object in accordance with the type and purpose of the purchase item, or if the customer has attached any such non-conforming purchase item to another object in accordance with the type and purpose of the purchase item, the customer will be entitled, pursuant to section 439 subsection 3 of the German Civil Code ("Bürgerliches Gesetzbuch" / "BGB"), to claim from us reimbursement of the expenses incurred in the removal of the non-conforming purchase item as well as in the installation or attachment of the repaired purchase item or of the conforming new purchase item (so-called removal and installation costs) only subject to the stipulations set out hereinbelow.

(6) "Required" costs subject to reimbursement pursuant to section 439 subsection 3 of the German Civil Code ("Bürgerliches Gesetzbuch" / "BGB") are defined as removal and installation costs that are incurred in the removal and installation of identical products based on standard market conditions and which the customer evidences to us by presenting suitable documents in text form as a minimum requirement. The customer is not permitted to request advance payment of any such removal and installation costs. Except with our prior consent, the client is not permitted to unilaterally offset expense compensation claims for removal and installation costs against our purchase price claims or any other payment claims. The provisions set out in section 3 subsection 5 remain unaffected thereby. Any claims from the customer that go beyond the required removal and installation costs, including, but not limited to, consequential damage arising from the non-conformity, such as lost profits, downtime costs, additional costs incurred for replacement purchases, do not qualify as removal and installation costs and will not, therefore, be reimbursed within the scope of subsequent performance in accordance with section 439 subsection 3 of the German Civil Code ("Bürgerliches Gesetzbuch" / "BGB").

(7) In the event that the costs claimed by the customer for subsequent performance (within the meaning of section 439 subsection 3 of the German Civil Code ("Bürgerliches Gesetzbuch" / "BGB")) are disproportionate, particularly in relation to the purchase price of a conforming identical item and under consideration of the degree of severity of contract violation, we will be entitled to refuse reimbursement of such costs. Costs will be deemed disproportionate if the costs claimed by the customer (within the meaning of section 439 subsection 3 of the German Civil Code ("Bürgerliches Gesetzbuch" / "BGB")) exceed 150 % of the purchase price of identical conforming items or 200 % of the items' value as diminished by the non-conformity.

(8) If subsequent performance fails, the customer will be at liberty to assert other statutory claims for lack of conformity (including, but not limited to, rescission, reduction of the purchase price, substitute performance, damages or reimbursement of futile expenses), subject to the proviso that all applicable statutory requirements are met. The customer will be entitled to assert claims for damages only to the extent set out in Section 8 of these Conditions of Sale.

(9) Claims to recourse pursuant to sections 445a and 478 of the German Civil Code ("Bürgerliches Gesetzbuch" / "BGB") can be asserted only if the customer's **claim is justified and only** to the statutory extent, but not for goodwill regulations agreed upon with us, and will require compliance with own duties of the party entitled to recourse, in particular compliance with the applicable notification duties (obligation to give notice of non-conformity).

(10) The customer's claims for non-conformity will become time-barred in accordance with the stipulations set out in Section 9 of these Conditions of Sale.

## **Section 8**

### **Liability**

We will be liable for damages only under the provisions set out hereinbelow:

(1) We will be liable in accordance with statutory provisions if the customer asserts claims for damages that are based on intent or gross negligence, including intent or gross negligence on the part of our representatives or vicarious agents. If neither intentional nor grossly negligent contract violation can be attributed to us, liability for damages will be limited to the foreseeable damage that may typically arise.

(2) We will be liable in accordance with statutory provisions if we culpably infringe an essential contractual obligation; in this case, liability for damages will, however, be limited to the foreseeable damage that may typically arise.

(3) If the customer is entitled to a claim for damages in lieu of performance on account of a negligence-based breach of duty, our liability will also be limited to the foreseeable damage that may typically arise in accordance with section (3).

(4) Liability on account of culpable injury to life, limb or health will remain unaffected; this also applies to both strict liability as provided for in the German Product Liability Act ("Produkthaftungsgesetz") as well as to liability under a guarantee.

(5) The liability limitations stipulated hereinbefore also apply if the customer claims compensation of futile expenses in lieu of damages instead of performance.

(6) To the extent that our liability for damages is excluded or limited, this limitation or exclusion also applies to the personal liability for damages of our managers, employees, workers, representatives and vicarious agents.

(7) The customer's claims for damages will become time-barred in accordance with the stipulations set out in Section 9 of these Conditions of Sale.

## **Section 9**

### **Limitation Period**

(1) The limitation period for claims for lack of conformity (including claims for damages in respect of non-conformities) amounts to 12 months, calculated from the moment at which the risk passes. This rule does not apply if the purchased item is an object which, in being used for its usual purpose, has been incorporated in a building and has caused the non-conformity. This limitation period does not apply either if the law provides for longer limitation periods pursuant to section 438 subsection 1 no. 2 (building structures and items used for building structures), section 438 subsection 3 (fraudulent concealment of a non-conformity), sections 445 b, 478 (right of recourse) as well as section 634a subsection 1 no. 2 (non-conformities of construction work) of the German Civil Code ("Bürgerliches Gesetzbuch" / "BGB").

(2) Any other claims made by the customer to which the limitation period established for claims for lack of conformity does not apply will be subject to a preclusion period of 18 months. It commences as from the point in time of acquiring knowledge of the damage and of the author of the damage.

(3) In the following cases, the statutory limitation periods will remain unaffected by stipulations set out hereinabove:

- in the event of damage to life, limb or health;
- in the event of damage caused by intentional or grossly negligent breach of duty on our part or on the part of our legal representatives or vicarious agents;
- with regard to the customer's right to rescind the contract in case of a breach of duty for which we are responsible that does not lie in a non-conformity of the purchase item or work;
- in the event of claims arising from fraudulent concealment of a non-conformity or if a warranty of specific characteristics has been given ("Beschaffenheitsgarantie") within the meaning of Section 444 or Section 639 of the German Civil Code ("Bürgerliches Gesetzbuch" / "BGB").

### **Section 10** **Retention of Title**

(1) We will retain ownership of the purchase item until all payments resulting from the business relationship with the customer have been received. If the customer violates the contract, including, but not limited to, through a delay in payment, we will have the right to repossess the purchase item. Repossession of the purchase item by us will be rescission from the contract. After repossession of the purchase item, we will be entitled to its utilisation; the utilisation revenues will then be set off against the customer's liabilities, less reasonable utilisation costs.

(2) The customer will be obliged to treat the purchase item with due care; the customer will particularly be obliged to sufficiently insure the item at its own expense against damage from fire, water and theft at reinstatement value. If maintenance or inspection work is required, this work will be carried out by the customer in a timely manner and at its own expense.

(3) In the event of a seizure of property or other interventions of third parties, the customer will be obliged to notify us in writing without delay so that we will be able to take legal action as provided for in section 771 of the German Code of Civil Procedure ("Zivilprozessordnung" / "ZPO"). If and to the extent that any such third party may not be capable of compensating us for any judicial and extra-judicial costs incurred in connection with action taken in accordance with to section 771 of the German Code of Civil Procedure ("Zivilprozessordnung" / "ZPO"), the customer will be liable for the losses incurred by us.

(4) The customer will be entitled to resell the goods in the ordinary course of business. However, the customer hereby agrees that it will transfer the amount of the final invoice (including value-added tax) of our claim from all accounts receivable arising from the resale to its own customers or to third parties regardless of whether the purchase items were sold with or without having undergone further processing or treatment. The customer will remain authorised to collect this debt even after assignment. Our authority to collect the debt ourselves will remain unaffected thereby. However, we undertake not to collect the debt as long as the customer complies with the customer's payment obligations from the proceeds received, as long the customer is not in arrears with the payments due to us and in particular, as long as no petition for composition or insolvency has been filed and as long as payments are not suspended.

However, if any of the cases indicated hereinabove applies, we may demand the customer to disclose to us the assigned debts and the relevant debtors, to give us all information necessary for collection, to provide the associated documentation and to inform the debtors (third parties) of the assignment.

(5) Processing, treatment or transformation of the purchase item by the customer will always be carried out for us. If the purchase item is processed involving items other than those owned by us, then co-ownership of the item thus processed will be granted to us in proportion of the value of the purchase item (final invoice amount incl. value-added tax) to the other processed items at the time the processing takes place. The item generated through processing will be subject to the same rules as applicable to the purchase item delivered under retention of title.

(6) If the purchase item is inseparably mixed with items other than those owned by us, then co-ownership of the item thus generated will be granted to us in proportion of the value of the purchase item (final invoice amount incl. value-added tax) to the other mixed items at the time the intermixture takes place. If the mixing is done in a way that the customer's item is to be considered as the main item, then it will be deemed to be agreed that co-ownership will be granted to us by the customer on a pro-rata basis. The customer will keep the sole or co-ownership item thus generated in safe custody on our behalf.

(7) The customer will, for the purpose of securing our claims against it, also assign to us any claims to which it is entitled vis-à-vis any third party on account of a combination of the purchase item with real estate.

(8) We undertake that we will release, at the customer's request, the securities to which we are entitled, to the extent that the realisable value of our securities exceeds the claims to be secured by more than 10%. The selection of the securities to be released will be at our discretion.

## **Section 11**

### **Third-Party Protective Rights**

The customer undertakes to ensure that its information and instructions relating to the products to be manufactured by us (e.g. information and instructions provided in drawings and specifications) do not violate any third-party property rights (e.g. patents, registered designs etc.). If deliveries are made on the basis of drawings or other data provided by the customer and if third party property rights are infringed as a result, the customer will be obliged to indemnify us and hold us harmless against any such third-party claims.

## **Section 12**

### **Place of Jurisdiction - Place of Performance**

(1) If the customer is a merchant, our place of business in Altena (Westf.), Germany, will be the place of jurisdiction; however, we will also be entitled to bring legal action against the customer at its place of general jurisdiction (forum domicilii).

(2) The law of the Federal Republic of Germany will apply, to the exclusion of the UN Law on International Sales (CISG United Nations Convention on Contracts for the International Sales of Goods).

(3) Unless otherwise stated in the order confirmation, our place of business in Altena (Westf.), Germany, will be the place of performance.