

## **GENERAL TERMS AND CONDITIONS for the Supply of Machines to Export Countries**

PLARAD<sup>®</sup> - Maschinenfabrik Wagner GmbH & Co. KG, Much-Birrenbachshöhe

### **§ 1 GENERAL PROVISIONS**

- (1) These General Terms and Conditions apply to all business relationships between Maschinenfabrik Wagner GmbH & Co. KG (hereinafter: "Supplier") and their customers (hereinafter: "Customer").
- (2) These General Terms and Conditions apply exclusively. Any varying, contradictory or supplementary general terms and conditions of the Customer shall only form part of a contract if and insofar as the Supplier has expressly agreed to their application.
- (3) Individual agreements concluded on an individual basis with the Customer shall take precedence over these General Terms and Conditions. Such agreements must be in writing in order to be binding.
- (4) Legally relevant declarations and announcements which have to be provided by the Customer to the Supplier following conclusion of the contract must be in writing in order to be valid.

### **§ 2 CONCLUSION OF THE CONTRACT, PRODUCT INFORMATION**

- (1) The Supplier's offers are subject to change and non-binding. This also applies where the Customer is provided with catalogues, technical documentation (e.g. drawings, plans, calculations, cost estimates, referrals to DIN standards), other product specifications or documents - including those in electronic form.
- (2) The purchase order from the Customer is deemed to be a binding offer to conclude the contract. The Supplier is entitled to accept this binding offer within a period of 2 weeks from the date of receipt of the binding offer.
- (3) Acceptance may either be given in writing or by way of delivery of the goods to the Customer.
- (4) Where one party provides the other with drawings and technical documents relating to the delivery item or its manufacture, before or after conclusion of the contract, these shall remain the property of the party providing them.

Where one party receives drawings, technical documents or other technical information, they may not be used for any purpose other than that for which they were provided, without the consent of the other party. They must not be used for other purposes, copied, reproduced, handed over or disclosed to third parties without the consent of the party providing them.

- (5) The Supplier shall provide the Customer with information and drawings, free of charge, by no later than the date of delivery, which shall enable the Customer to assemble the delivered item, put it into operation and maintain and service it. The documents are available in German and English; other languages are only available on request. Such instructions and drawings must be provided in the agreed number, but in any case no less than one copy of each. The Supplier is not obliged to procure workshop drawings for the delivered item or for spare parts. The source code for programming does not have to be disclosed by the Supplier.

### **§ 3 ACCEPTANCE INSPECTION**

- (1) A final inspection agreed in the contract shall be carried out by the Supplier at the place of manufacture of the delivery item. The Supplier shall document this by way of an inspection report which shall be handed to the Customer on request. The cost of the final inspection carried out at the place of manufacture shall be borne by the Supplier.
- (2) If the Customer has been promised the chance of being present at the final inspection, the Supplier must notify the Customer in writing, in due time prior to the inspection. The travel and living costs which the Customer incurs in connection with the inspection must be borne by the Customer itself.

### **§ 4 DELIVERY AND TRANSFER OF RISK**

- (1) The agreed delivery clauses must be interpreted in accordance with the INCOTERMS applicable on conclusion of the contract.
- (2) In the absence of any agreement to the contrary, the delivery item will be delivered "ex works" (EXW) which will also be the place of performance. Part-deliveries are permitted.

- (3) The delivery item will be shipped to another destination at the request and cost of the Customer.
- (4) The risk of accidental loss or deterioration of the goods shall pass to the Customer on handover at the latest. In the case of a "*Versendungskauf*", the risk of the accidental loss or deterioration of the goods as well as the risk of delay shall pass when the goods are handed over to the shipping company, carrier or other person or company assigned to carry out the shipping. Insofar as an acceptance procedure has been agreed, this shall determine the passing of risk. Default of acceptance shall be deemed as handover or acceptance.

## **§ 5 DELIVERY PERIOD AND DEFAULT ON DELIVERY**

- (1) Where, rather than a fixed delivery date, the parties agree on a delivery period, by the expiry of which, delivery must take place, the delivery period shall commence on conclusion of the purchase contract, completion of all official formalities, settlement of all payments due as of conclusion of the contract, provision of any agreed security and on compliance with any other preconditions agreed between the parties.
- (2) Where the Supplier realises that the delivery item cannot be delivered within the delivery period, he shall notify the Customer of this without undue delay and at the same time indicate, where possible, the anticipated delivery date. Where the delivery item is still unavailable within the new delivery period, the Supplier shall be entitled to rescind the contract; any consideration already effected by the Customer shall be reimbursed without undue delay. Unavailability within the meaning of this provision refers in particular to a failure by the Supplier's supplier to effect delivery on time if the Supplier has concluded a congruent covering transaction. Supplier's statutory rights of rescission and the statutory provisions relating to winding up the contract where the obligation to effect performance is excluded shall be unaffected. Also Customer's rights of rescission according to Clause 11 of these General Terms and Conditions shall be unaffected.
- (3) Default of delivery of the Supplier is subject to the statutory provisions. In any case, however, the Customer is required to send a reminder.
- (4) Where the Supplier defaults on delivery, the Customer may claim liquidated damage for the loss caused by the delay. The liquidated damage shall amount to 0.5% of the net purchase price for each full week of delay, but in any case no more than a total of 5% of the net purchase price of the delayed delivery item. The Supplier reserves the right to provide proof that the Customer suffered no loss at all or a significantly smaller loss than the aforementioned liquidated damage.

## **§ 6 DEFAULT ON INSPECTION AND ACCEPTANCE**

- (1) In the event that the Customer foresees that it will not be able to accept the delivery item on the delivery date, it shall inform the Supplier of this without undue delay, in writing, and at the same time indicate, if possible, the date on which acceptance of delivery can be effected.
- (2) If the Customer fails to accept delivery on the delivery date, it must nevertheless pay the part of the purchase price due on delivery as though the delivery had been successful.
- (3) If the Customer defaults on acceptance, fails to cooperate or delays in accepting delivery for other reasons for which the Customer is responsible, the Supplier may claim compensation for the loss arising as a result thereof including additional expenditure incurred (e.g. for storage). The Supplier charges liquidated damage in the amount of 0.2 % of the net purchase price per day starting as of the delivery period or, in the absence of a delivery period, as of the date of notification that the goods are ready for shipment. The Supplier reserves the right to provide proof that the loss suffered was higher. The statutory rights of the Supplier shall remain unaffected. Liquidated damage must however be set off against subsequent additional pecuniary claims. The Customer reserves the right to provide proof that the Supplier suffered no loss at all or a significantly smaller loss.

The Supplier may make a written request to the Customer to accept delivery within a reasonable final deadline. In the event that, for reasons which cannot be attributed to the Supplier, the Customer fails to accept delivery within the said final deadline, the Supplier may rescind the contract. The aforementioned rights to claim compensation for damages and expenditures in the case of default on acceptance remain unaffected by this.

## **§ 7 EXPORT AND IMPORT**

- (1) The Supplier shall ensure that the delivery item can be exported. It shall bear the risk of an export ban existing on the date of the conclusion of the contract. In the event of subsequent export bans, the Supplier shall only bear the risk if and insofar as they were in evidence at the time of conclusion of the contract.
- (2) Where necessary, the Customer shall procure the import licence as well as all the approvals, permits and other documents required in connection with import and possible transit through third party states. It shall bear the risk of an import ban existing on the date of the conclusion of the contract. In the event of

subsequent import bans, the Customer shall only bear the risk if and insofar as they were in evidence at the time of conclusion of the contract.

## **§ 8 PRICES AND PAYMENT TERMS**

- (1) The net ex works prices, valid as at the time of conclusion of the contract, shall apply, plus value added tax. Any customs duty, fees, taxes and other public charges shall be borne by the Customer.
- (2) In the absence of an agreement to the contrary, payments must be made within a period of 30 days as from the invoice date without any deductions. In the event of the export of delivery items, provided nothing has been agreed to the contrary, 50% of the purchase price is due on conclusion of the contract. The final payment is due on delivery. This final payment must be secured by way of a letter of credit.
- (3) The Customer shall only be entitled to withhold payments or set them off against counterclaims, insofar as its counterclaims are undisputed or have been established as final and absolute.
- (4) Irrespective of the means of payment used, payment shall only be deemed to have taken place when the full invoice amount has been irrevocably credited to the Supplier's bank account.
- (5) On expiry of the aforementioned payment period, the Customer shall be in default of payment. The purchase price shall bear interest as from the date on which it became due for payment. The interest rate shall be 8 percentage points above the rate of the European Central Bank's marginal lending facility applicable when the payment becomes due.
- (6) In the event of delayed payment, the Supplier may, after sending a written notification to the Customer, stop performance of its contractual obligations until payment is received. If the Customer is more than three months behind with its payments, the Supplier may rescind the contract, by way of a written notification to the Customer, and claim compensation from the Customer for the damage incurred.
- (7) If it becomes apparent, following conclusion of the contract, that the Supplier's right to receive payment of the purchase price is at risk due to the Customer's inability to effect performance, the Supplier shall be entitled to refuse performance in accordance with the statutory provisions and - where applicable after setting a deadline - to rescind the contract.
- (8) The Supplier is entitled to assign its claims to a debt-collector or to safeguard the value of the goods by way of a trade credit insurance or state guarantee.

## **§ 9 RETENTION OF TITLE**

- (1) Title to the delivery item shall remain with the Supplier until payment in full of all our current and future outstanding claims arising under the contract and from the ongoing business relationship, insofar as such retention of title is valid under the applicable law.
- (2) At the Supplier's request, the Customer must provide its full support for efforts to safeguard the Supplier's title to the delivery item in the country concerned.
- (3) The Supplier is entitled to insure the delivery item at the Customer's expense against theft, breakage, fire damage, water damage and other damage, insofar as the Customer has not provided verification that it has concluded the insurance itself.
- (4) Prior to payment in full of the claims set out in sub-clause 1 above, the delivery item may not be pledged to third parties or assigned by way of security. If and insofar as third parties dispose of the delivery item the Customer must inform the Supplier of this in writing without undue delay.
- (5) In the event that the Customer is in breach of contract, the Supplier is entitled to rescind the contract in accordance with the statutory provisions and claim return of the delivery item on the basis of the retention of title and rescission. In the case of default on payment, this shall only apply if the Supplier has set a reasonable deadline before which the Customer must effect payment or if such setting of a deadline is not required under the statutory provisions.
- (6) The Customer is entitled to resell the delivery item subject to the retention of title in the ordinary course of business. In this case, the following supplementary provisions shall apply.
  - (a) By way of security, the Customer hereby assigns to the Supplier, all its claims against third parties arising out of the resale of the delivery item. The Supplier hereby accepts the assignment.
  - (b) The Customer shall remain, along with the Supplier, authorised to collect payment of the receivables. The Supplier undertakes to refrain from collecting the receivables provided that the Customer complies with its payment obligations towards the Supplier, that it does not default on payment, that no application is made to institute insolvency proceedings and that there is no other indication of the Customer's inability to effect contractual performance. If this is the case, however, the Supplier may require the Customer to identify the assigned claims and debtors, disclose all the information necessary

for collection, provide the accompanying documentation and notify the debtors (third parties) of the assignment.

- (c) If the realisable value of the collateral exceeds the Supplier's claims by more than 10%, the Supplier shall, at the Customer's request, release collateral of the Supplier's choice.

## § 10 LIABILITY FOR DEFECTS

- (1) The Customer's rights in the event of defects in quality and title are governed by the statutory provisions, provided the following does not stipulate anything to the contrary.
- (2) The Customer's rights to claim for defects are subject to the Customer's compliance with its statutory obligation to examine the goods and issue a notification of defects (Sections 377 and 381 German Commercial Code (*HGB*)). Where a defect is found during the examination or subsequently, the Customer must notify the Supplier of this without undue delay, in writing. This notification of defects must in any case take place within two weeks; the date on which the notification is sent shall determine compliance with the deadline. The notification of defects must contain a description of the type of application, relevant photographic material and the Supplier's service questionnaire completed in full.

The Customer must notify the Supplier of apparent defects within 2 weeks of delivery in writing; the date on which the notification is sent again determines compliance with the deadline.

If the Customer fails to carry out a proper examination and/or issue notification of defects, the Supplier's liability for the undisclosed defects is excluded.

- (3) Rights to claim for defects cannot be asserted in the following cases: for normal wear and tear, for defects which were known by the Customer at the time of purchase, if the Customer is responsible due to poor maintenance, improper repairs, inappropriate use or incorrect storage. The instructions contained in the operating manual provided must be strictly adhered to when using the delivery item.
- (4) Where the delivery item is defective, the Supplier may at first choose whether to effect subsequent performance by removing the defect or by supplying a defect-free item. The Supplier's right to refuse the chosen method of subsequent performance pursuant to the statutory conditions remains unaffected.
- (5) The Supplier is entitled to condition subsequent performance by payment of the outstanding purchase price by the Customer. The Customer is however entitled to withhold a part of the purchase price which is proportionate to the defect.
- (6) The defect must generally be repaired at the place where the delivery item is located; at the Supplier's discretion, however, the defective part or the delivery item must be sent back for repair or replacement. The Supplier is obliged to dismantle and install the part where this requires special expertise. If such special expertise is not required, the Supplier's obligation with respect to the defect ceases on delivery to the Customer of the properly repaired or replaced delivery item.
- (7) The Customer must allow the Supplier the necessary time and opportunity for subsequent performance and in particular hand over the delivery item for examination purposes. In the case of replacement, the Customer must return the defective delivery item in accordance with the statutory provisions.
- (8) Where there is a defect, expenditures involved in examination and subsequent performance shall be borne by the Supplier. Where the Customer notified the Supplier of a defect but no defect can be found for which the Supplier is liable, the Customer must compensate the Supplier for damage incurred as a result of such notification.
- (9) It may be agreed in writing that the Customer or qualified third party will repair the defect at the cost of the Supplier. Only a service station with trained personnel authorised by the Supplier is entitled in this regard. The Customer's right to carry out the work itself also exists in cases of urgency, e.g. in the case of serious impending risk to legally protected interests or to prevent major damage. The Supplier must be notified of such measures without undue delay or, if possible, beforehand. The Customer's right to carry out the work itself does not apply if and insofar as the Supplier would have been entitled to refuse to carry out subsequent performance under the statutory provisions.
- (10) In the event that subsequent performance fails or a reasonable time limit imposed on the Supplier by the Customer expires without result, or setting a time limit is not required, the Customer may rescind the contract or reduce the purchase price. The right of rescission does not apply in the case of minor defects.
- (11) Claims by the Customer for damages or compensation for wasted expenses only exist in accordance with Clause 11 and are otherwise excluded.

## **§ 11 OTHER LIABILITY**

- (1) In the absence of anything to the contrary contained in these General Terms and Conditions including the following provisions, the Supplier shall be liable in the event of a breach of contractual and non-contractual obligations, in accordance with the relevant statutory provisions.
- (2) The Supplier shall be liable to pay compensation for damages, irrespective of the legal basis, in case of wilful intent and gross negligence. In the case of simple negligence, the Supplier shall only be liable
  - a) for loss resulting from death, personal injury or damage to health,
  - b) for loss resulting from the breach of a material contractual condition (an obligation whose performance is a prerequisite for proper implementation of the contract and upon whose compliance the contracting partner regularly relies and may rely); in this case, the Supplier's liability shall be limited to foreseeable, typical damage.
- (3) The limitations on liability arising under the foregoing sub-clause shall not apply where the Supplier has fraudulently concealed a defect or has given a guarantee as to the nature of the delivery item. The same applies to the Customer's rights under the Product Liability Act.
- (4) Subject to provisions to the contrary in these General Terms and Conditions, the liability of one party to the other for the shut-down of production, loss of profit, loss of use, contractual loss or any other consequential loss or indirect damage, is excluded.
- (5) The Customer may only rescind the contract due to a breach of contractual duty which does not consist in a defect if the Supplier is responsible for the breach of contractual duty.

## **§ 12 FORCE MAJEURE**

- (1) Either party is entitled to cease performance of its contractual obligations insofar as such performance is rendered impossible or excessively difficult as a result of the following circumstances: labour disputes and all situations beyond the control of the parties such as fire, war, general mobilisation, civil unrest, requisition, sequestration, embargo, restrictions on the use of energy as well as defects or delays in deliveries from subcontractors as a result of the circumstances set out in this clause.

Circumstances pursuant to this clause which occur before or after conclusion of the contract shall only entitle a party to cease performance of its contractual obligations insofar as its effects on performance of the contract were not foreseeable at the time of conclusion of the contract.
- (2) The party claiming force majeure must inform the other party without undue delay and in writing of the occurrence of such circumstances and when they come to an end.
- (3) Where force majeure prevents the Customer from performing its contractual obligations, it must compensate the Supplier for costs incurred in securing and safeguarding the delivery item.
- (4) Irrespective of all the consequences set out in these General Terms and Conditions, both parties shall have the right to rescind the contract by sending a written notification to the other party, where performance of the contract ceases pursuant to sub-clause 1 for a period of more than six months.

## **§ 13 LIMITATION PERIOD**

- (1) In derogation from Section 438 (1) No. 3 German Civil Code (*BGB*), the general limitation period for claims arising from defects in quality and title shall be one year from delivery. Where an acceptance procedure is agreed, the limitation period shall begin on acceptance. Irrespective of this, such claims become time-barred no later than one year and six months after notification that the delivery item is ready for shipment.
- (2) The foregoing limitation period also applies to contractual and non-contractual damages claims by the Customer based on a defect in the delivery item, unless application of the normal statutory limitation period would, in the individual case, lead to a shorter limitation period. The limitation periods contained in the Product Liability Act shall remain unaffected. In other respects, the statutory limitation periods shall apply exclusively with regard to damages claims by the Customer pursuant to Clause 11.

## **§ 14 DISPUTES AND APPLICABLE LAW**

- (1) The law of the Federal Republic of Germany shall apply to these General Terms and Conditions and all legal relations between the Supplier and the Customer, to the exclusion of all international and supranational (contractual) laws, in particular the UN Treaty on the International Sale of Goods.