

## Terms of delivery and payment

### NOCK Maschinenbau GmbH

#### 1. Conclusion of Contract

- 1.1. The following terms and conditions for delivery and payment shall govern exclusively all deliveries and services by NOCK Maschinenbau GmbH. They shall form integral part of all offers and contracts for deliveries and services and for all future contracts in the case of permanent business relationships; they shall apply to corporate bodies under public law, special funds under public law or business entities in the sense of the German Commercial Code (HGB) (Kaufleute) – regarding the latter only if the sales contract is part of their business dealings in the sense of the German Commercial Code (HGB) We do not accept the buyer's terms and conditions unless we expressly agreed to them in writing.
- 1.2. GmbH. They shall form integral part of all offers and contracts for deliveries and services and for all future contracts in the case of permanent business relationships; they shall apply to corporate bodies under public law, special funds under public law or business entities in the sense of the German Commercial Code (HGB) (Kaufleute) – regarding the latter only if the sales contract is part of their business dealings in the sense of the German Commercial Code (HGB) We do not accept the buyer's terms and conditions unless we expressly agreed to them in writing.
- 1.3. Our offers are subject to change.
- 1.4. Unless expressly defined to be binding, pictures, drawings, weights, sizes and performance specifications that are part of our offer are only approximate values. The Seller reserves title and property rights to all cost estimates, drawings and other documents. These documents must not be made available to third parties.
- 1.5. The contract is only deemed to have been finalized if the Seller has confirmed acceptance of the order in writing.
- 1.6. All agreements shall be made in writing. This also applies to supplementary agreements and warranties and to amendments to the contract.
- 1.7. The Buyer may transfer his rights and obligations resulting from the sales contract only if the Seller has given his written consent.

#### 2. Prices and Payment

- 2.1. The prices of the items of purchase (purchase prices) are in EURO, without discounts nor other price reductions, plus VAT. Additional charges apply for extra services (such as packaging, transport, commissioning) agreed upon. We will not take back any packaging. Transport insurance is only concluded at the express request of the Buyer, and at his expense.
- 2.2. The purchase price and any additional prices for supplementary services shall be due and payable upon transfer of the object of purchase or dispatch of the invoice.
- 2.3. Money-orders, cheques, bills of exchange and letters of credit are only accepted upon special agreement and only on account of performance; all collection and discount fees shall be payable by the Buyer.
- 2.4. The Buyer can only assert setoff rights against the Seller, if the Buyer's counterclaims are undisputed or have become res judicata. The retention of due payments by the Buyer is only permitted for claims arising from the purchase contract.
- 2.5. In the event of late payment, the Seller shall be entitled to terminate the purchase contract by notice in writing and to claim damages for non-performance of contract.
- 2.6. In the event of late payment, the Seller shall be entitled to claim for default interests on arrears of 8 percent above the base rate of the European Central Bank (ECB). The Seller is entitled, however, to claim for higher rates if he can prove to have had higher interest expenses. If the Seller must send a written reminder, he will charge additional € 5.00 reminder charges for extra cost and correspondence.

#### 3. Delivery and Delayed Delivery

- 3.1. Delivery is ex works Friesenheim, duty unpaid and uninsured.
- 3.2. Delivery dates or delivery times must be fixed in writing. If subsequent modifications to the contract are agreed, a new delivery date or delivery time may have to be agreed at the same time, if applicable. Delivery dates or deadlines are deemed to be observed if the item has left the factory of its readiness for shipment has been notified to the Buyer before their expiry.
- 3.3. In any event beyond the Seller's control, causing a delay or the prevention of delivery, as a whole or in part, including force majeure, and any other extraordinary circumstances beyond the Seller's responsibility, the agreed delivery deadline shall be extended by the duration of the impediment of performance. The same applies to legally binding deadlines or to deadlines set by the Buyer, especially in the event of additional respites for delayed deliveries. Force majeure is deemed to be war and warlike events, mobilization, import and export embargos and blockades. Other extraordinary circumstances are, in particular, transportation obstacles, operational breakdowns, delays in raw material supplies, strikes and lockouts and any other industrial action, even if they occur at the Sellers' suppliers. The Buyer shall not be entitled to withdraw from the contract and shall have no right to claim compensation for damages before expiry of the extended time of delivery or deadlines.
- 3.4. Unless otherwise expressly agreed upon in writing, the Seller shall be entitled to make part-deliveries to a reasonable extent. Part-deliveries will be invoiced separately.
- 3.5. The Seller reserves the right to modify the construction and the form of the item during the delivery period, provided that the modifications are reasonable and no substantial changes.

#### 4. Acceptance

- 4.1. The risk passes to the Buyer at the time the purchased item or parts are surrendered to the carrier, however, at the latest upon leaving the factory, which is also the case with part-deliveries. This also applies if the Seller has taken on other items of performance, such as dispatching or delivery and/or installation, at the Buyer's request.
- 4.2. In the event that the delivery is delayed for reasons which are at the responsibility of the Buyer, the risk shall pass onto the Buyer, from the day when notice is given that the goods are ready for delivery. The Seller, however, shall take out, at the Buyer's expense, any insurance requested by the Buyer.

- 4.3. In the case of a delay of acceptance of the item, caused by gross negligence or intent, and exceeding 14 days from receipt of the written notification of readiness for dispatch, the Seller may grant the Buyer in writing another extension period of 14 days, declaring that acceptance will be refused after expiry of the respite. If the respite expires unused, the Seller is entitled to withdraw from the contract by written notice or to claim damages for non-performance of the contract. The Seller shall not be obliged to grant respite in the case that the Buyer seriously and definitely refuses acceptance of the item, or if it is obvious that he would also be unable to pay the purchase price, if an extension period was granted. In the event that the Seller claims compensation for damages incurred due to the non-performance of the contract, these shall be at a rate of 15 % of the purchase price. A higher or lower compensation rate shall be defined, if the Seller can prove that he had higher or lower damages.

#### 5. Reservation of title

- 5.1. Title in the purchased item shall not pass to the Buyer until it has been paid for in full. The retention of title shall also apply to those claims of the Seller against the Buyer that arise at some later point in time, for example, from repair work or delivery of spare parts any other accounts payable. The retention of title also applies to any claims the Seller has against the Buyer under current business relations, if the Buyer is a corporate body under public law, special funds under public law or a business entity in the sense of the German Commercial Code (HGB) (Kaufleute) – regarding the latter only if the sales contract is part of their business dealings in the sense of the German Commercial Code (HGB).
- 5.2. As long as the retention of title exists, the sale, pledging, transfer of ownership by way of security, renting out or any other assignment of the purchased item and its processed variances, which impairs the securing of the Sellers claims, shall only be authorized with the Seller's prior written consent.
- 5.3. In the event of third party possession, especially in case of a seizure of the purchased item, the Buyer shall immediately inform the Seller thereof in writing, and shall inform the third party without delay of the Seller's retention of title. The Buyer shall bear all expenses incurred for terminating any such possession and for efforts to reacquire possession of the purchased item to the extent that said costs cannot be recovered from any third parties.
- 5.4. If the Buyer resells the delivered item with the authorization of the Seller in the normal course of his business, all claims arising from the resell shall be assigned to the Seller. Before granting his authorization, the Seller must be informed by the Buyer, whether and to what extent prohibition of assignment of claims is agreed with respect to the purchase price payable between him (Buyer) and his customers. This can be done, for example, by presentation of the complete terms and conditions of the contract and all corresponding documents.
- 5.5. The Buyer is obliged to keep the reserved goods in safe custody, handle them with care, maintain them at his own expense, and insure the risk of loss, damage and destruction at his expense to the extent required by a reasonable tradesperson. The Buyer hereby assigns to us in advance the claims arising out of the insurance contracts and agrees that benefits will be paid to the Seller. For the purpose of claiming insurance benefits, the Buyer shall hand out the insurance policy to the Seller upon his request.

#### 6. Inspection of the goods / purchased item

- 6.1. Immediately following delivery, the Buyer shall inspect the items delivered for their conformance to the contract, in particular regarding the number, dimensions, form, appearance and workmanship, integrity and transport damages as well as any other defects. Disclosed defects and irregularities must be notified to the Seller in writing without delay. The notification must specify the designation of the goods, the type of irregularities or defects, the day of delivery and the number of the delivery receipt.
- 6.2. Hidden defects must be notified in writing, no later than within one week after discovery of such defects. The burden of proof of a hidden defect shall be borne by the Buyer.
- 6.3. The Buyer is obliged to initially receive the goods and to keep them in safe custody, regardless of any possible irregularities or defects. In addition, the Buyer must give the Seller the opportunity to inspect the rejected goods.
- 6.4. In the event of the Buyer's breach of his duty to inspect and give notice of defect according to clause 1 – 3, the goods are deemed to be accepted.
- 6.5. The Buyer must not put into operation any goods rejected. If the Buyer fails to perform this obligation, the Seller shall not be liable for any damages arising thereof. Furthermore, the Buyer is obliged to bear all additional expenses incurred for the repair of defects caused by operation, or to pay back the Seller the costs incurred.

#### 7. Warranty

- 7.1. The Seller warrants that the purchased item will be free of defects for a period of one year, corresponding to the specific state of the art of the type of item purchased. The warranty applies to one shift operation. Irregularities and defects within the limits defined by relevant technical standards are not deemed to be defects. The same applies to customary, technically unavoidable irregularities, as far as the usability of the item for the purpose specified in the contract is not more than insubstantially reduced. The warranty does not apply to wear parts.
- 7.2. If the goods purchased are defective and are not deemed to be accepted, the Buyer is entitled to claim rectification of deficiencies and repair of any other parts of the item that are possibly damaged as a result thereof (rectification).

7.3. The following procedure shall apply:

- a) The Buyer must assert his claims with the Seller. The Buyer shall notify the Seller about the defects in writing without delay or have the Seller record the defects himself.
- b) The Seller shall deliver substitute parts ex works, Friesenheim, for any defect parts, which are covered by warranty. The Buyer shall be responsible for transport and replacing. The parts replaced shall become the property of the Seller.
- c) The warranty for the replaced parts ends with the guarantee time of the item granted under the purchase contract.

7.4. In the event that the defect cannot be repaired, or if further repair attempts would be unacceptable for the Buyer, the Buyer is entitled to declare cancellation of the contract or claim abatement (reduction of the purchase price) instead of further rectification attempts. In the case that the Buyer declares reduction (abatement) of the purchase price, cancellation of the contract for the same defect shall be excluded. The Buyer has no right to claim replacement.

7.5. Warranty claims and liability for damages and bodily injury shall be excluded, if the damage is causally related to one or more of the following reasons:

- a) The purchased item was used improperly, or was placed under excessive performance demands;
- b) The Buyer failed to follow the requirements prescribed by the Seller (e.g. operation manual), regarding the storage, transport, mounting, start-up, care, operation, cleaning or maintenance of the item;
- c) Faulty repair;
- d) the purchased item was modified without authorization;
- e) Performance data (e.g. drive characteristics, output, engine speed) were modified without authorization;
- f) Parts were installed, the use of which was not authorized by the Seller in writing;
- g) The purchased item was operated with defective safety installations, or with safety installations and protective guards that were not installed properly or that were inoperable;
- h) Insufficient control of so-called wearing machine parts;
- i) Catastrophes, effects from extraneous elements, force majeure;

7.6. Further damage claims shall be excluded, except for the case of intent or gross negligence. This shall not affect the right to claim compensation for non-performance in the case that warranted characteristics are not provided.

7.7. The above stipulated claims for damages are subject of a limitation according to clause 1.

7.8. In the case that a defect is notified within the warranty period but not yet repaired, warranty is extended until rectification of the defect; for this time, the limitation period shall be inhibited for this defect.

8. **Liability**

8.1. Damage claims for impossibility of performance, non-performance, positive breach of contract, culpa in contrahendo, that are not provoked by the Seller's intent or gross negligence, are excluded. The limitation of liability also applies to the benefit of the Seller's staff members, workers, co-worker, factors, servants and assignees.

9. **Data processing**

9.1. The Buyer agrees that the Seller shall be entitled to process the data received from the Buyer for the purpose of his own business operation, i.e. in particular to keep or to transfer the data, within the context of their business relationship, to a credit protection agency, in conformance with the German Federal Data Protection Act, as far as data processing is related to the purpose of the contract or required to protect the Seller's justified interests, and there is no reason to assume that the Buyer's legitimate interest to exclude processing, in particular the transfer of the data, prevails.

10. **Other**

10.1. German law shall be applicable. The application of the provisions of the CISG is expressly excluded.

10.2. The place of performance for delivery and payment shall be Friesenheim. If the Buyer is business entity (Kaufmann) in the sense of the German Commercial Code (HGB), a corporate body under public law or a special funds under public law, the place of venue shall be Offenburg – also for actions of bills of exchange or cheques. The Seller is entitled, however, to bring action against the Buyer also before his general place of venue.

10.3. Should one or more provisions of these Terms and Conditions be legally invalid or un-executable, the validity of the remaining provisions of this contract shall not be affected thereby.

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