

## **CCC Machinery GmbH**

### **Standard Terms and Conditions of Purchase**

#### **1. Scope**

Our Standard Terms and Conditions of Purchase shall apply exclusively; any terms and conditions on the part of the Seller deviating from or contradicting these terms and conditions shall apply only if and to the extent that we expressly accept them in writing. These General Terms and Conditions of Purchase shall also apply notwithstanding the fact that we accept deliveries from the Seller without any restrictions in spite of being aware of provisions in the Seller's terms and conditions contrary to or deviating from our own General Terms and Conditions of Purchase.

In addition to these Standard Terms and Conditions of Purchase, the provisions of the Incoterms as last amended from time to time shall also apply; these Standard Terms and Conditions of Purchase shall prevail in the event of any inconsistency with the Incoterms.

Any deviations in the contract or the order shall prevail over the provisions contained in these Standard Terms and Conditions of Purchase.

#### **2. Contract**

A legally binding purchase contract shall arise pursuant to the terms and conditions of the Buyer's order upon the confirmation of order duly signed by the Seller reaching the Buyer or upon delivery being executed without any objections pursuant to the Buyer's Standard Terms and Conditions of Purchase.

The Buyer reserves the right to reject the Seller's confirmation of order if it is not sent to the Buyer within 14 days of receipt of the Buyer's order.

If the Seller's confirmation of order contains any provisions at variance to those contained in the Buyer's order, the contract shall not be deemed to be entered into unless it is expressly confirmed by the Buyer in writing.

#### **3. Scope of delivery**

The scope of delivery, the specific terms and conditions as well as the conditions and specifications of producers or suppliers, where enclosed, shall be governed by the contract. In the absence of any detailed specifications, the goods supplied shall conform to the standard industry quality.

All specifications as well as drawings and illustrations included in the contract and the documents to which it refers (including but not limited to weight, performance, consumption and power requirements) shall be binding on the Seller unless they are expressly referred to as being "approximations". If a contract is entered into on the basis of the Seller's offer, this shall also apply to all specifications included in the offer or any other related documents. In the event of any discrepancy, however, the specifications included in the contract and the documents to which it refers shall prevail.

If and to the extent that the dimensions and weights of the goods delivered exceed the specifications stated in the offer, the Seller shall reimburse the Buyer for any additional cost caused as a result, e.g. freight, customs etc.

#### **4. Prices**

In the absence of any agreement to the contrary, prices shall be quoted fixed FOB specified port of consignment including the cost of packaging suitable for the type of transportation.

If the Seller lowers its prices any time prior to the day of delivery, the agreed individual prices as well as the total

price stated in the contract or the invoice shall be adjusted accordingly.

Prices include statutory VAT unless mentioned otherwise.

#### **5. Terms of payment**

At the Buyer's discretion, payment shall be effected 8 days after receipt and examination of the invoice subject to 3% cash discount or net by the 15th of the month following delivery by means of bank transfer, cash payment or check. Payment shall be remitted only if the goods have been delivered in accordance with the provisions of the contract and the consignment and technical documents have been received correctly.

The Buyer may defer payment pending full and proper performance of the contract by the Seller except where the Buyer has agreed to make an advance payment. If the Seller is required by any statutory or contractual provisions to bear or reimburse costs or if the Buyer holds any counterclaims, the Buyer may at its own discretion defer payment or net such claims. This shall also apply if the Buyer's claims and the Seller's counterclaims do not stem from the same legal relationship.

#### **6. Delivery period**

The delivery dates and periods stated by the Buyer in the order shall be binding and shall refer to the date on which the goods arrive at the destination address stipulated in the contract (fixed-date transaction). If a delivery period has been agreed upon in lieu of a delivery date, such period shall commence on the date on which the Buyer sends the contract.

If the agreed delivery date is not met, the Buyer may at its own discretion rescind the contract or demand performance and recover flat-rate compensation of 3% (say: three percent) of the net value of the outstanding part of the delivery for each week or part thereof by which the delivery date is exceeded, provided that this does not exceed a total of 15% of the value of the delivery, unless the Seller proves that the loss actually sustained by the Buyer is lower than this. This shall have no effect on any other remedies which may be available to the Buyer at law.

If the delivery date or period is exceeded due to unforeseen circumstances or on account of force majeure, the Buyer may either demand performance of the contract at a later date or rescind the contract if as a result of the delay it no longer has any reasonable use for the goods or it cannot reasonably be expected to wait for delivery. The Seller may only rely on instances of unforeseen events or force majeure if it immediately notifies the Buyer of these and provides suitable proof (certificate, survey report etc.). The following events shall not be deemed to constitute unforeseen events or force majeure, meaning that the Seller shall not be able to rely on them as an excuse for any delays in delivery: Delays in delivery on the part of the Seller's own suppliers, holiday breaks, and defective production.

#### **7. Transfer of risk**

The Seller shall bear the risk of loss and/or impairment of the goods delivered pending transfer to the recipient nominated by the Buyer at the destination address/port/airport (transfer of risk). In the absence of any agreement to the contrary concerning the transfer of risk, the provisions in the Incoterms as last amended shall apply. If the Buyer remits any payments prior to delivery, the Seller shall insure the goods against the usual transportation and/or storage risks until the transfer of risk at its own expense and in favor of the Buyer and furnish the Buyer with proof of such cover.

#### **8. Packaging**

The Seller shall deliver the goods in suitable packaging in line with industry standards, it being agreed that the Seller

shall bear the cost of such packaging. Goods which are normally delivered in loose form shall be bundled securely in such a way that they are resistant to the effects of repeated lifting and setting-down. Industry-standard crates for sea transportation shall be lined with oil paper and secured with iron tape and safety fasteners. Under no circumstances may old or damaged crates, hay or straw or acidic packaging paper be used. Parts subject to rusting must be thoroughly greased. Polished parts must be wrapped in paraffin or parchment paper.

The goods and packaging shall only bear the markings or origin signs specified in the contract.

The Seller shall be responsible for any additional transportation costs or damage to the goods delivered caused by incorrect or non-contractual consignment, packaging and/or declarations. In addition, the Seller shall be liable for all loss caused by delayed, incorrect, incomplete or neglected declarations, packaging, markings or registration.

#### **9. Transfer of rights, retained ownership rights**

Neither the contract nor the individual rights, obligations or claims provided for in it may be assigned to third parties without the Buyer's express written consent.

The Seller may not retain any ownership rights regardless of their type. Any declarations made by the Seller on consignment notes, invoices or other documents shall be binding only if confirmed in writing by the Buyer. Acceptance of the goods shall not be deemed to construe acknowledgement of the Seller's retained ownership rights.

#### **10. Seller's credit standing**

The Buyer may rescind the contract upon becoming aware of any circumstances after the date of the contract indicating a material deterioration in the Seller's financial condition.

#### **11. Provision of collateral in the event of payments made**

If the Buyer remits any payments prior to delivery, the Seller shall transfer to the Buyer ownership rights to the goods to be delivered as well as all related items up to an amount equaling the payment remitted. The Seller undertakes to designate such goods as the Buyer's property in accordance with its instructions. Pending delivery of the goods, the Seller shall store them free of charge for the Buyer and on request separately from other items.

#### **12. Liability for faults**

The Seller warrants and represents that the goods delivered do not exhibit any faults impairing their value or their suitability for their intended purpose and conform to the conditions and qualities specified in the contract. The Seller additionally warrants and represents that the goods delivered comply with all administrative and statutory rules and regulations including but not limited to the applicable on-site safety and accident-prevention rules including in cases in which the goods have been made to order.

If the goods and services delivered do not conform to the above requirements, the Buyer may at its own discretion demand that the non-compliance be remedied or that the goods be replaced – if necessary using other designs or materials – at the Seller's expense or rescind the contract or demand a price reduction. Non-compliant goods may be returned at the Seller's expense. This shall not affect any other remedies available at law to the Buyer on account of non-compliant goods or services.

If the Seller is in default with respect to its demanded efforts to remedy the non-compliance or to deliver

replacements or if an immediate remedy is necessary to protect the Buyer's interests, the Buyer – after notifying the Seller in the latter case - may remedy the non-compliance itself or procure third parties to do so or arrange delivery of compliant goods at the Seller's expense. In any case, the Buyer may remedy minor faults itself or procure for them to be remedied, i.e. without invoking the provisions contained in Sentence 1. In this case, the Seller shall be sent a report and a list of the costs incurred after the fault has been remedied or fault-free goods have been supplied.

If the Buyer opts to have the fault remedied, it may rescind the contract or demand a price reduction if such remedy fails and the Seller is in default of delivery of replacements. This shall have no effect on the Buyer's right to recover damages particularly in lieu of performance of the contract.

The Buyer shall be under a duty to inspect the goods and to notify the Seller in the event of incomplete delivery. The Buyer undertakes to perform an appropriate examination of the incoming goods by taking reasonable random samples to determine the identity, weight, dimensions and appearance of the goods delivered immediately, provided that this is no later than five workdays after receipt. The Buyer shall not be required to examine the functions of the goods or perform other examinations until they are put into operation (e.g. trial run). The Buyer shall notify the Seller of any apparent faults in the goods delivered immediately, provided that this is no later than 7 days after receipt of the goods. Other faults shall be reported within 7 days of being discovered.

The time bar period shall be 36 months starting with the date of transfer of risk. Shorter time bar periods shall apply only if they are expressly confirmed in writing by the Buyer. The time bar period shall be extended by the period of time required to remedy faults or deliver replacements starting with the date on which the Seller receives the Buyer's notification of the fault and ending on the date on which the Seller declares in writing that the fault has been remedied or the replacements delivered or refuses to take any further measures to remedy the fault or supply replacements. If the Buyer remedies the fault itself or arranges for delivery of fault-free goods, the time bar period shall be extended by the period of time required to remedy the fault or receive delivery of the fault-free goods.

The Seller shall issue a separate guarantee for the work performed on remedying the fault or the replacement delivery to the same extent and for the same period as that applicable to the original goods, it being understood that the time bar period shall commence on the date on which the fault has been remedied or replacements delivered.

The Seller shall hold the Buyer harmless against all third-party claims arising from product faults in cases in which the Seller is responsible for the fault-giving rise to such liability. Moreover, the Seller shall bear the costs of any recalls which may be necessary.

#### **13. Buyer's right to rescind the contract or demand a price reduction**

If the Seller is unable to perform all or part of the contract, the Buyer may rescind the contract in the event of complete impossibility of performance. In the case of partial impossibility, the Buyer may demand a reasonable price reduction or, if partial performance of the contract is of no use to it, rescind the entire contract.

If the Buyer makes use of its right of rescission, the Seller shall immediately refund any payments made by the Buyer plus interest at a rate of 8 percentage points above the European Central Bank's base rate starting with the date of receipt of such payment unless the Seller is able to prove that the Buyer's actual loss is less than this. Moreover, the Buyer may recover compensation from the Seller for any costs incurred by it for customs and

transportation including transport insurance. The liability to pay interest and reimburse the Buyer for any costs shall apply only if partial or full impossibility of performance is due to reasons for which the Seller is responsible.

#### **14. Production liability – indemnity – liability insurance**

If the Seller is liable for any product damage, it undertakes to hold the Buyer harmless against third-party claims for damages on first request to the extent that the cause of such damage is to be found within its realm of influence and it is liable itself in relations with third parties. The Seller agrees to hold the Buyer harmless in the event of any liability towards third parties pursuant to European product liability law regardless of the conditions outlined above.

#### **15. Infringement of third-party rights**

The Seller warrants and represents that no third party rights are breached by the delivery of the goods and that the goods delivered are not encumbered by any third-party rights.

The Seller undertakes to hold the Buyer harmless on first written request against any claims asserted against it by third parties. The Seller's duty to hold the Buyer harmless shall include all expenses incurred by the Buyer as a result of or in connection with the claim asserted by a third party. Moreover, in the event of a breach of any third-party rights, the Buyer may cancel all orders affected, return goods which have not yet been sold and recover damages from the Seller.

The time bar period shall be ten years commencing with the date of on which the contract arises.

#### **16. Buyer's liability**

To the extent that the Buyer is liable towards the Seller pursuant to the terms of the contract or any applicable statutory provisions, such liability shall be limited to gross negligence or willful misconduct as well as the culpable breach of any material contractual obligation jeopardizing performance of the contract.

Liability other than for willful misconduct shall be limited to typical and foreseeable loss or damage.

The Buyer shall be liable in accordance with the applicable statutory provisions for claims arising from personal injury or loss of life for reasons for which the Buyer, or its statutory representative or servants are responsible due to willful misconduct or gross negligence.

These provisions shall also apply to any personal liability on the part of the Buyer's statutory representatives, employees and servants.

#### **17. Business secrets**

The Seller undertakes to treat the order and any documents related to it as a strictly confidential business secret on the part of the Buyer. The Seller may only disclose the existence of the business relations with the Buyer to third parties with the Buyer's express written approval.

#### **18. General provisions**

All legal relations between the Seller and the Buyer shall be subject to the laws of the Federal Republic of Germany. The provisions of the United Nations Convention on the International Sale of Goods (CISG) as well as all other supranational agreements shall be excluded, notwithstanding the fact that they have been ratified under German law.

All disputes arising under this contract shall be referred to the courts of law responsible for the Buyer's domicile or

those responsible for the Seller's domicile in the case of the Buyer commencing court proceedings and solely those responsible for the Buyer's domicile in the case of the Seller commencing the court proceedings. This shall have no effect on statutory regulations concerning exclusive jurisdiction.

If in a dispute between the Buyer and any of its own Buyers the Seller is notified accordingly or if it is given the opportunity of gaining detailed information on the dispute and of supporting the Buyer - in cases in which it is not possible for the Seller to be notified of the dispute at the legal venue - the Seller shall be bound by the decision made to settle such dispute.

These Standard Terms and Conditions of Purchase were originally drafted in German, with versions in other languages provided as a guide. **It is expressly understood that the only German-language version of the Standard Terms and Conditions of Purchase shall be legally binding.**