

General Terms and Conditions of Sale and Supply

1. GENERAL

- 1.1 These General Terms and Conditions of Sale and Supply (GTCS) shall apply to all business relationships between Eberhard AG ("we") and its customers. However, they shall only apply where the customer is an entrepreneur within the meaning of § 14 German Civil Code (*Bürgerliches Gesetzbuch*), a legal entity under public law or a special public fund (*öffentlich-rechtliches Sondervermögen*).
- 1.2 These GTCS shall apply exclusively even if we, with knowledge of the customer's terms and conditions, accept orders, perform services or directly or indirectly refer to letters, etc., which contain the customer's or third-party terms and conditions without any reservations. Terms and conditions of the customer which conflict with, differ from or supplement our terms and conditions will not be accepted.
- 1.3 The respective current version of our GTCS shall also apply to all future supplies, services or offers which we make to the same customer even if we do not mention or refer to them again.

2. OFFER AND CONTRACTUAL OBLIGATIONS

- 2.1 Our offers shall be valid for 6 (six) weeks from the offer date. Our offers are non-binding and without obligation.
- 2.2 We reserve the right to modify the machines or other services in terms of design and bring them in line with technical developments, provided that this does not impair the overall performance.
- 2.3 A termination right of the customer, in particular pursuant to §§ 651, 649 German Civil Code is excluded.

3. SUPPLY

- 3.1 Delivery dates and deadlines are non-binding unless otherwise expressly agreed. If we do not meet a non-binding deadline, the customer shall grant us a reasonable period of at least 6 (six) weeks to provide this service.
- 3.2 Unless otherwise expressly agreed, delivery shall be ex works or warehouse ("EXW Incoterms (2010)").
- 3.3 We are entitled to provide part deliveries and partial billing.

4. INSTRUCTING THE CUSTOMER, COMMISSIONING AND ACCEPTANCE

- 4.1 We will instruct the customer on how to operate the machine during preliminary acceptance at our premises. A record of the preliminary acceptance will be signed by both parties. The machine will be delivered after preliminary acceptance as soon as we and the customer have approved of the delivery or part-delivery in writing, however at the latest within 10 (ten) calendar days from the date we issued notification that the machine is ready for dispatch.
- 4.2 The machine will be commissioned at the customer's premises by our staff on grounds of warranty unless otherwise agreed between the customer and us in writing.
- 4.3 If we are required to commission a machine the customer shall place the machine at the place it is to be commissioned and provide all the necessary connections (especially the supply of energy and air to the machine) required for it to function properly.
- 4.4 Once the machine has been commissioned the machine will be finally accepted without undue delay in accordance with the agreed acceptance conditions. The customer shall provide all the necessary test materials and sufficient personnel to carry out the acceptance procedure for its own account. Any necessary remedy of a defect (*Nachbesserung*) to the machine shall not hinder acceptance if we undertake to remedy these defects as soon as possible under warranty.
- 4.5 If acceptance takes place as stipulated in the agreement, the machine or other delivery shall be deemed accepted at the latest if
- 4.5.1 the machine or any other delivery, and if we also owe assembly or a similar service (such as installation, commissioning, set up/adjustment), the assembly or a similar service has been completed,
- 4.5.2 we have notified the customer without undue delay after conclusion and have requested acceptance,

- 4.5.3 (a) 20 (twenty) working days have passed since delivery or assembly, if applicable or a similar service or (b) the customer has started using the machine or other delivery (e.g. has put the delivered and possibly assembled machine into operation) and in such case, 15 (fifteen) working days have passed since delivery or assembly, if applicable or a similar service and
- 4.5.4 the customer failed to accept the delivery within the above-mentioned period for a reason other than because of a material defect of which we were notified which made the machine or other delivery impossible to use or which materially impaired it.

- 4.6 Acceptance without reservation despite defects which are known to the customer notwithstanding § 640 (2) German Civil Code shall not only lead to the customer losing such rights prescribed in § 634 (1) to (3) German Civil Code but shall also lead to a loss of compensation claims under § 634 (4) German Civil Code. This shall not apply in cases where we assume a warranty or wilfully fail to disclose a defect.

- 4.7 The costs we charge for commissioning and support during final acceptance and any other preliminary, intermediate or part-acceptance by us on our premises are not included in the cost of the machine and shall be calculated separately on the basis of time and material, provided there is no agreement to the contrary.

5. PAYMENT TERMS

- 5.1 Unless otherwise agreed, our invoices are payable within 30 (thirty) calendar days of delivery or in the event of acceptance after such acceptance and receipt of invoice without any deduction and in euros (EUR).
- 5.2 The customer shall be deemed to be in default when the respective payment deadline expires; no formal warning need to be issued. During default, interest shall accrue at the applicable statutory default interest rate. We are also entitled to the standard default amount pursuant to § 288 (5) sentence 1 German Civil Code. We reserve the right to assert any further default damage. In business with entrepreneurs this has no effect on our entitlement to default interest (§ 353 German Commercial Code (*Handelsgesetzbuch*)).

6. RESERVATION OF TITLE

We retain the title to the machines and to all other deliveries until the payment has been made in full.

7. CLAIMS FOR DEFECTS

- 7.1 If a machine or any other delivery is defective the customer may demand that we remedy the defect (*Nachbesserung*) or provide a replacement (*Ersatzlieferung*) as we see fit.
- 7.2 Unless otherwise expressly agreed,
- 7.2.1 our machines and other deliveries are only required to comply with the statutory requirements applicable in the Federal Republic of Germany and
- 7.2.2 only the customer is responsible for integrating the machine and other deliveries in the technical, structural and organisational set-up at its company.
- 7.3 In any event, the customer shall allow us the time and the opportunity needed to examine notification of defects and other complaints and to remedy the defects; in particular it shall make the machine concerned or any other delivery available for the said purposes or – where the machine is assembled or installed in a fixed manner – shall grant us access to the site.
- 7.4 If, following a first request the customer has set a further deadline after which it will refuse to take acceptance and such deadline has expired unsuccessfully or if two attempts to remedy defects or provide replacements have been unsuccessful, the customer's rights shall be in accordance with the statutory provisions without prejudice to (9) of these GTCS.
- 7.5 If it is either impossible for us to remedy the defect by means of subsequent performance or if the defect can only be remedied by subsequent performance with disproportionate means we are entitled to indicate to the customer reasonable ways of avoiding or reducing the effects of the defect.

- 7.6 If the cause of the defect is defectiveness in the product of a supplier, our warranty shall be restricted to assignment of our claims for defects against the supplier. If fulfilment of the assigned claims based on defects fails after satisfaction from the supplier has been sought through the courts, these claims shall again be directed against us. However, this shall not apply if the customer has instructed us only to use the supplies and services of a given supplier and if we have alerted the customer to our reservations to this instruction.
- 7.7 Defects shall be notified in writing with a lucid description of the symptoms of the defect.
- 7.8 We shall not be liable under warranty if the customer modifies the machine or another delivery or has it modified by third parties without our consent and if such modification makes it impossible or unreasonably difficult to remedy the defect or causes or partially causes a defect. In any event the customer shall bear any additional costs generated by remedying the defect.
- 7.9 Claims of the customer based on defects shall become statute-barred after one year. The limitation period shall begin on handover (*Übergabe*). If acceptance has been agreed the limitation period shall begin on acceptance. If delivery, assembly or commissioning of the machine or another delivery is delayed for reasons for which the customer is responsible, claims shall become statute-barred no later than 12 months after the machine or another delivery is ready for dispatch.
- 7.10 Any claims for compensation shall be subject to (9) of these GTCS.

8. SPECIAL TERMS AND CONDITIONS FOR NEW SPECIAL MACHINES

- 8.1 If the subject of supply is a machine which is custom-built to the specific requirements of the customer and if we have not yet produced equipment of this type for the purpose designated by the customer, the special provisions in (8) of these GTCS shall take precedence.
- 8.2 If delivery dates or deadlines are not met owing to unforeseeable difficulties of a design or other technical nature we shall not be deemed to be in default until expiry of a further period commensurate with the exceptional circumstances.
- 8.3 The machine shall be deemed ready for acceptance if, irrespective of the agreed performance characteristics, it can perform reasonably taking into account the technical difficulties associated with the material to be processed and the economic use to the customer.

9. LIABILITY

- 9.1 Unless set out otherwise in these GTCS including the following provisions, we shall be liable in accordance with the statutory provisions for a breach of contractual and non-contractual duties.
- 9.2 We have unlimited liability for compensation for losses based on an intentional or grossly negligent breach of duty on our part or by one of our legal representatives or vicarious agents. In the event of a simple negligent breach of duty (*einfach fahrlässige Pflichtverletzung*) on our part or by one of our legal representatives or vicarious agents we shall be
- 9.2.1 fully liable for resultant losses arising from injury to life, limb or health;
- 9.2.2 liable for losses arising from a breach of material contractual duties. Material contractual duties are those duties that are essential to the performance of the contract and on whose fulfilment the customer ordinarily relies and can rely. In this case, however, our liability is limited in amount to losses that are typical of this type of contract and that were foreseeable at the time the contract was concluded.

- 9.3 The liability limitations shall not apply as far as we have maliciously concealed a defect or have assumed a warranty for the attributes of a machine or other delivery which may entail liability to pay compensation or as far as we have assumed a procurement risk. This shall have no effect on mandatory liability under the Product Liability Act (*Produkthaftungsgesetz*).
- 9.4 In as far as our liability is excluded or limited under the above provisions, this also applies to the personal liability of our directors and officers, legal representatives, employees, workers and other vicarious agents.

10. CONFIDENTIALITY AND UTILISATION RIGHTS

- 10.1 Subject to a non-disclosure agreement concluded by the customer and us, the customer shall treat all information on our company know-how, in particular all business and trade secrets, with the utmost confidentiality and shall not disclose such information or company secrets to third parties unless indispensable for fulfilment of the contract. Plant specifications, prices, drawings and other documents belonging to our offers only serve to notify the customer and shall not be made available to third parties either in whole or in part without our prior written consent.
- 10.2 Machines or other deliveries which we have developed and/or supplied shall not be copied, reproduced, reconstructed or made accessible to third parties either in whole or in part without our prior written consent.
- 10.3 In as far as software — in whatever form — forms a constituent part of our machines or other deliveries the rights granted therein to the customer on supply shall be restricted to use of such software in conjunction with the machine or other subject of supply solely for the business operations of the customer. The customer may only pass the software to a third party if
- 10.3.1 it has contractually imposed the obligation on such third party not to use the software other than in compliance with the scope of utilisation rights granted previously to the customer and
- 10.3.2 it has informed us in writing without undue delay accordingly, providing details of the third party (name, address, for legal entities name/s of authorised representative/s) and
- 10.3.3 it has irreversibly deleted any remaining copies of our software that the customer may have.
- The customer is prohibited from using or having used the software we have provided with a machine for the purpose of operating several machines at the same time and it is prohibited from leasing the software or providing it to third parties on a temporary basis.
- 10.4 Furthermore, the restrictions on utilisation rights granted to us by a third party as regards software which we have received from third parties, of which we notified the customer on conclusion of the contract, apply supplementary.

11. CHOICE OF LAW, PLACE OF PERFORMANCE, PLACE OF JURISDICTION

- 11.1 The business relationships between us and the customer shall be subject solely to the law of the Federal Republic of Germany. The UN Convention on the International Sale of Goods (CISG) shall not apply. Place of performance is our registered office.
- 11.2 If the customer is an entrepreneur (*Kaufmann*), a legal entity under public law or a special public fund or has no general place of jurisdiction in the Federal Republic of Germany, the place of jurisdiction for all disputes arising from and in connection with the business relationship between us and the customer shall be Göppingen; this also applies internationally. However, we may bring action against the customer at the customer's registered office or at the place of performance. This provision has no effect on mandatory statutory provisions on the exclusive places of jurisdiction