

## **CCC Machinery GmbH**

### **Standard Terms and Conditions of Sale**

#### **1. Scope**

Our Standard Terms and Conditions of Sale shall apply exclusively. Any terms and conditions on the part of the Buyer or its supplier inconsistent with or contrary to these Standard Terms and Conditions of Sale shall be deemed void unless we confirm them in writing. These Standard Terms and Conditions of Sale shall also apply notwithstanding the fact that we effect deliveries to the Buyer without any restrictions in spite of being aware of provisions in the terms and conditions of the Buyer or his supplier contrary to or deviating from our own Standard Terms and Conditions of Sale.

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

#### **2. Contract**

Unless expressly stated otherwise, the Seller's offers shall be non-binding and without engagement. Legally binding contracts shall not arise until the Seller confirms the Buyer's order in writing or delivery of the goods is effected by the Seller subject to its Standard Terms and Conditions of Sale.

The Buyer may only rely on any ancillary agreements, representations concerning the quality of the goods, warranties and any other agreements including purported amendments to these Standard Terms and Conditions of Sale including this provision if these are confirmed by the Seller in the purchase contract or in any other written form.

#### **3. Delivery specifications, part-deliveries**

The goods to be delivered and the delivery specifications shall be determined solely by the Seller's written confirmation of the order or a written contract signed by both parties.

Specific qualities of the goods to be delivered including reference to standards, similar technical rules, other technical parameters, descriptions and illustrations of the goods in question in brochures or offers shall fundamentally only be deemed to constitute warranties on the part of the Seller provided that it expressly confirms these in writing. The Seller reserves the right to make necessary technical modifications which do not materially impair the suitability of the goods for their intended purpose and which can be reasonably assumed to be acceptable to the Buyer.

Reasonable part-deliveries shall be acceptable. The corresponding part-invoices shall be payable by the Buyer upon falling due. The Seller shall bear any resultant additional transportation costs if they have been unilaterally caused by him.

#### **4. Prices, price changes**

All prices are quoted exclusive of any deductions and value added tax. If the prices of our own suppliers change or additional costs are incurred as a result of any impairment to transportation, e.g. low-water surcharges, known and unknown public levies (including price-adjustment levies as a result of import restrictions), freight and increases in freight charges, the imposition of new or an increase in existing import or export taxes, customs and other levies, additional costs as a result of changes in exchange rates, we may negotiate a corresponding increase in the purchase price with the Buyer. If these negotiations do not result in a mutually acceptable solution within two weeks after receipt of a corresponding request for such negotiations, the Buyer shall be entitled and obliged to determine the price increase by exercising its

own reasonable discretion. At the Seller's request, the price increase determined by the Buyer may be reviewed by the Chamber for Commercial Disputes of the Regional Court of Hamburg (Landgericht Hamburg, Kammer für Handelssachen), whose ruling shall be binding on the Buyer.

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

The Buyer may not retain payments or offset any counterclaims unless such claims are undisputed by us or have been finally upheld in a court of law.

In the event of a material deterioration in the Buyer's financial state or if the Seller becomes aware of any other circumstances giving rise to considerable justified doubt as to the Buyer's solvability or credit standing, the Seller may rescind the contract unless the Buyer pays the purchase price in advance or furnishes at its own expense collateral which is classified as approved security for the purposes of court litigation in Germany within one week of the Seller's request. In this case, the Buyer shall bear all costs arising from such rescission.

In the event of any default in payment on the part of the Buyer, the Seller may defer all deliveries and services owing to the Buyer unless the value of the default is only relatively small. As long as the Buyer is in default of payment, the Seller shall not be deemed to be in default of delivery.

#### **6. Retained ownership rights**

Notwithstanding any other agreements concerning collateral for the open-term arrangements, the goods shall remain our property until full payment has been received.

#### **7. Assignment**

The Seller may assign all or part of its rights under this contract including but not limited to the claim to receipt of the purchase price and any collateral provided by the Buyer in support thereof to third parties free of any restrictions.

#### **8. Delivery periods**

The consignment/delivery periods or dates stated by us shall be approximate and non-binding only unless they are expressly stated as being guaranteed.

If delivery periods are guaranteed by way of exception, such period shall not commence until the Buyer has at its own expense furnished all the necessary documents and permits, advance and/or part payments, payment instruments and collateral and all commercial and technical questions outstanding on the date on which the contract is entered into have been clarified. If such a delivery period is exceeded, the Buyer may not rescind the contract until it has provided a reasonable additional period in writing, after the expiry of which it may refuse to accept delivery of the goods or services.

The Seller shall be exempt from its duty to deliver and shall be under no obligation to provide reimbursement for any expenses and/or loss if any event unforeseeable for the Seller occurs as well as in the case of force majeure, it being understood that exemption shall apply for the duration of such circumstances. Force majeure shall include but not be limited to events such as war, war-like conditions (including those not preceded by a declaration of war and/or between two other countries), revolts, civil disorder, rebellion, sabotage, boycott, seizures, embargos, quarantine, disruptions to operations and/or transportation, labor unrest for reasons for which the Seller is not responsible, acts of government, government agencies or similar institutions, catastrophes and radioactive contamination.

Similarly, the Seller shall be under no obligation to deliver or provide reimbursement for costs or loss incurred if

necessary documents and/or approvals required after the commencement of the delivery period are not furnished by the Buyer as well as in the event of delays, faulty or incomplete deliveries from the Seller's own suppliers for reasons beyond the Seller's control, as well as in cases in which procurement of the goods to be delivered or any parts thereof results in unreasonable hardship for the Seller.

The Seller shall be only liable pursuant to German statutory provisions if and to the extent that the underlying purchase contract constitutes a fixed-date purchase as defined in the German Civil Code. Moreover, the Seller shall be liable solely pursuant to the applicable statutory provisions if as a result of any delay in delivery for reasons for which the Seller is responsible the Buyer has no reasonable use for the goods.

The Seller shall be only liable pursuant to German statutory provisions if the delay in delivery is due to willful misconduct or gross negligence on the part of the Seller or the Seller's representatives or servants. If the delay in delivery is due to a deliberate breach of contract on the part of the Seller, liability shall be limited to typical and foreseeable loss and damage.

The Seller shall also be liable pursuant to German statutory provisions if the delay in delivery for reasons for which the Seller is responsible is due to the culpable breach of a material contractual obligation. In this case, liability shall be limited to typical and foreseeable loss and damage.

In the absence of anything to the contrary, the Seller shall in the event of any delay in delivery be liable to pay compensation of 0.5% of the value of the goods to be delivered for every full week of delay, provided that this does not exceed a maximum of 5% of the value of the goods to be delivered.

#### **9. Transfer of risk**

Risk shall be transferred pursuant to the Incoterms as last amended. In the absence of any express contractual provisions to the contrary, deliveries shall be executed FOB (free on board) at a port in the country of origin of the goods.

If delivery is postponed at the Buyer's request or for reasons for which the Buyer is responsible, the risk of accidental loss and/or impairment of the goods shall pass to the Buyer on the day on which delivery would have been executed pursuant to the original provisions of the contract and the Seller has notified the Buyer that the goods in question are ready for delivery.

#### **10. Acceptance**

If the goods delivered exhibit only minor faults, delivery shall still be accepted by the Buyer notwithstanding the rights contained in Section 10 herein.

If the Buyer is in default of acceptance of all or part of the delivery, it shall still be required to pay the amount due as if the delivery or part delivery had been accepted pursuant to the original contractual provisions.

After setting of a reasonable deadline for acceptance of delivery by the Buyer, the Seller may rescind all or part of the contract and recover damages.

Moreover, the Seller may at its own discretion store the goods at the Buyer's risk and expense and recover payment from the Buyer.

In the event of sales shipment, the Buyer shall immediately call down material available for consignment. If it fails to comply with this obligation, the Seller may at its own discretion store or independently sell the goods for the Buyer's account without availing itself of any third parties

and, where applicable, free of all responsibility. Any additional costs arising as a result shall be charged to the Buyer. In this case, the purchase price shall also be due for payment after the Seller has notified it that the goods in question are ready for dispatch.

#### **11. Liability for faults**

The Buyer shall report all faults immediately in detail. Failure to do so in the requisite form within the necessary period shall be deemed to constitute acknowledgement that the goods comply with the contractual stipulations.

The Seller shall be given an immediate opportunity of examining the goods before remedying or repairing a purported fault. At the Seller's request, the Buyer shall furnish a certificate or survey report confirming the fault and describing its cause. Such certificate or report shall be issued by a technical surveyor nominated by the Consulate of the Federal Republic of Germany, the Chamber of Commerce or another neutral office. The Seller shall be entitled to demand additional proof.

If the Buyer fails to comply with these duties or modifies or repairs the goods which it has reported as exhibiting a fault of its own accord without the Seller's approval, it shall forfeit all claims.

If the goods delivered exhibit any faults, the Seller shall at its own discretion remedy such fault either by repairing the goods in question or sending replacements. In this case, the Seller shall bear all costs required for remedying the fault, including but not limited to transportation, labor and material costs, with the exception of any additional costs arising from the removal of the goods from the location deemed to be the place of fulfillment.

If the attempt to remedy the fault fails, the Buyer may at its own discretion demands a reduction in the price payable or rescinds the contract. However, the Buyer shall have no right of rescission in the case of minor breaches of contractual duties, particularly minor faults.

The Seller shall only be liable pursuant to the applicable statutory provisions if the Buyer asserts claims for damages on account of willful misconduct or gross negligence on the part of the Seller including its representative and servants. Except in the event of willful breach of contract on the part of the Seller, liability shall be limited to typical and foreseeable loss or damage.

The Seller shall be liable pursuant to the applicable statutory provisions in the event that it has culpably breached a material contractual obligation, in which case liability shall be limited to typical and foreseeable loss and damage.

This shall have no effect on liability in the event of culpable personal injury or impairment to health, and if liability shall be governed by the mandatory provisions of the Product Liability Act.

In the absence of anything to the contrary in the provisions set out above, all liability shall be excluded.

Claims arising from faults exhibited by the goods delivered shall be barred after 12 months starting on the day on which risk is transferred.

This shall have no effect on the time bar in the event of any statutory claims based upon recourse of delivery being asserted, in which case such claims shall be barred after 5 years starting with the date of delivery of the goods in question.

In the event of production based on sketches, samples or any other instructions furnished by the Buyer, the Seller

shall assume no responsibility or liability for the proper functioning of the product or any other faults attributable to the Buyer's instructions and requirements.

The Seller shall not be responsible for surface rust or bending. Comments on the bill of lading such as "unprotected, wet before shipment, atmospherically rusty, top sheets rusty, edges bent, slightly bent etc." shall have no negative effect and shall be accepted by the buyer as being equivalent to "clean".

#### **12. Buyer's credit standing**

The Buyer warrants and represents that it is possible for us to take out credit-insurance cover on the purchase price no later than on the date on which the contract is performed. If on account of the Buyer's credit rating credit-insurance cover is not available or the cover such as is available is not sufficient, we may rescind the contract and recover damages from the Buyer to reimburse us for any loss resulting from the forced sale of the goods at the market prices prevailing on the date of such forced sale.

If the Buyer is in default of any due payment – including under earlier contracts – such that it must be assumed that its financial condition has materially deteriorated to such an extent that the recovery of payments owing to us may be jeopardized, the Seller shall be entitled to hold back all goods not yet delivered pending cash remittance of all due payments or the provision of sufficient collateral. If the Buyer fails to comply with this request, the Seller may rescind all or part of any contracts which have not yet been performed. The provisions set out above shall also apply if the Seller becomes aware of any circumstances after the date of the contract indicating a material impairment of the Buyer's financial situation such that performance of the contract by the Buyer is liable to be jeopardized. In the event of any delays in payment by the Buyer, the Seller may charge interest at a rate 6 percentage points above the European Central Bank's base rate.

#### **13. Export provisions**

If an export transaction has been agreed upon in the contract, the Buyer may not engage in any illegal onward deliveries. Goods which are to be sold for export, may not remain in an unprocessed state in the country of origin or in a customs or legal region belonging to the country of origin, or returned or delivered to such country or delivered or transported to a country other than that stated in the order.

Similarly, these goods may not be processed in the country of origin or the customs or legal region belonging to the country of origin.

At the Seller's request, the Buyer shall furnish proof of the whereabouts of the goods.

The Buyer shall impose on its own Buyers the same duty to assert the resultant claims and, on request, assign to the Seller these claims for the provision of proof, damages and contractual penalties. In addition, it undertakes to immediately notify the Seller of any infringement on the part of its Buyers of the duties imposed on them.

If the Buyer or any of its own Buyers infringes any of the aforementioned obligations, the Buyer shall reimburse the Seller for the lost profit and pay a contractual penalty of 10% of the agreed purchase price regardless of whether the Buyer is at fault or the Seller has sustained any loss as a result. This shall have no effect on any additional remedies available to the Seller.

#### **14. Overall liability**

All liability going beyond the scope defined in Section 11 herein is excluded regardless of its legal basis. This shall particularly apply to claims for damages on account of culpable conduct or for damages for property damage pursuant to Sections 823 et seq. of the German Civil Code.

In cases in which the Seller's liability is excluded or limited, such exclusion or limitation shall also apply to the personal liability of the Seller's employees, representatives and servants.

#### **15. General provisions**

All legal relations between the Seller and the Buyer shall be subject to the laws of the Federal Republic of Germany. Disputes shall be referred to the responsible court of law of the City of Hamburg. 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.

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

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