

Maag Automatik GmbH

General Terms and Conditions of Sale and Delivery of Machines

1. Scope

These General Terms and Conditions of Sale and Delivery shall govern the transaction described in seller's order acknowledgement unless additional or contrary terms are expressly stated in the seller's order acknowledgment. The purchaser's General Terms and Conditions, in particular the purchaser's Purchasing Terms and Conditions, do not become part of the contract even if the seller accepts payments from the purchaser and makes deliveries.

2. Conclusion of the contract

A contract for the sale of goods is made and becomes effective upon receipt by the purchaser of the seller's written order acknowledgment upon the terms stated therein.

3. Scope of delivery

The final and complete description of the deliveries and services to be rendered by the seller is given in the order acknowledgment including any annexes thereto.

4. Plans and technical documentation

- 4.1. Technical documentation such as illustrations, drawings, details of weights and dimensions provided by the seller are only approximate, unless they are contained in or referred to in the order acknowledgment or an annex thereto.
- 4.2. Data provided by the seller in respect of buildings (foundation plan, power supply plans, etc.) are not binding upon the seller, unless they are contained or referred to in the order acknowledgment, and they must be verified and complied with by the purchaser with respect to structural features. The purchaser is solely responsible for ensuring that its premises comply with the structural prerequisites for installing the items being supplied.
- 4.3. Each party to the contract reserves all rights to calculations, plans and technical documentation which it has made available to the other party. The party to the contract receiving such material acknowledges these rights and will not make the documentary material wholly or partially accessible to third parties or utilize it for purposes other than that for which it has been made available without obtaining the prior written authorization of the other party to the contract.
- 4.4. The purchaser itself may use the software, know-how and documentary material made available to it to the extent provided for, but may not disclose them to third parties or copy them. The purchaser may copy, adapt, translate or modify the object code to a source code within reasonable legal scope. Any duplication, extension or modification of software by the purchaser beyond the above-mentioned scope requires the written consent of the seller.

5. Technical Standard, Safety regulations (Health and Safety requirements)

The machinery and equipment manufactured and supplied by the seller conform to the relevant and directly applicable directives and standards of the European Community. Compliance with other standards requires written agreement to this effect in the order acknowledgment. All components or not independently functioning machinery will be supplied by the seller according to the directives of the European Community for manufacturers.

6. Retention of ownership

- 6.1. The seller retains ownership of the items supplied until all existing obligations towards it have been met in full and until it has been indemnified in full against all contingent liabilities.
- 6.2. The purchaser shall take all action necessary to protect the seller's property (e.g. procuring insurance on the items supplied) at its own expense. The purchaser shall and hereby does authorize the seller to execute any required instruments in the purchaser's name and to make any registration of its retention of ownership in public registers, books or suchlike which may be necessary to comply with the relevant legal provisions. The cost of registration will be borne by the purchaser.

7. Delivery and payment

- 7.1. Delivery, transfer of risk, insurance, etc., shall be made pursuant to the agreed Incoterms clause (ICC 2000 Edition). Unless agreed otherwise, delivery, transfer of risk, insurance, etc., shall be ex works pursuant to the Incoterms.
- 7.2. Part deliveries are permissible.
- 7.3. If delivery is delayed for reasons for which the seller is not responsible, the risk ex works pursuant to Incoterms passes to the purchaser. The items being supplied will be stored and insured by the seller at the purchaser's expense and risk.
- 7.4. Due to the lack of special agreements, the valid price according to the Incoterms is the ex works price plus taxes currently valid in Germany, excluding packaging.
- 7.5. Retention of payment or additional costs because of counterclaims denied by the purchaser or which are not yet legally binding are not allowed.

8. Date and delay of delivery

- 8.1. Both parties agree on the terms of delivery. Their fulfillment by the seller assumes that all commercial and technical questions between the parties are solved and that the purchaser has fulfilled his obligations, e.g. providing required official documents or approvals or initial payments. If this is not the case the delivery period will be appropriately extended but not if the seller is responsible for the delay.
- 8.2. The terms of delivery are subject to correct and punctual sub-delivery to the seller.
- 8.3. The delivery period will be appropriately extended and the date of delivery postponed in the event of force majeure such as epidemics, mobilization, war, riot, labor disputes, damage caused to the plant by natural disaster, embargoes, obstruction of import, export or transit, etc., or other obstacles outside the control of the seller, irrespective of whether these arise with the seller, the purchaser or a third party. Each party to the contract will itself bear the costs it incurs as the result of an event of force majeure.
- 8.4. The terms of delivery have been fulfilled if the items to be supplied are ready for collection at the site of the seller or if the purchaser has been informed accordingly. If delivery or shipment is delayed for reasons for which the purchaser is responsible, the purchaser has to bear all costs generated by the delay beginning one month after the notification of shipment / final inspection.
- 8.5. If the seller has failed to comply with the delivery period or date of delivery through a lack of due care, the purchaser is entitled to the payment of liquidated damages after the fifth week of delay, to the exclusion of all other claims. The liquidated damages shall be limited to 0.5% of the order value of the delayed part of the delivery for each full week of further delay, but in any event not exceeding a total of 5% of the order value of the delayed part of the delivery.
- 8.6. The purchaser may give the seller a reasonable extension of the time of delivery if the seller fails to comply with the date of delivery. If the seller fails to deliver within this period through a lack of due care, the purchaser may, by giving notice in writing to the seller, cancel that part of the delivery which cannot be utilized as intended due to the delay caused by the seller. If the purchaser cancels a delivery, he is entitled for compensations for losses which are provable caused by the delay. The total amount of compensation, including the liquidated damages for delay pursuant to Clause 8.5, may not exceed 15% of the order value of that part of the delivery which the purchaser has justifiably cancelled. All such compensation shall be subjected to Clause 11.
- 8.7. The above mentioned delivery time is subject to the technical clarification and approved layout drawings as per the documents schedule. Approval timeframe is requested to be 2 weeks maximum. Delays in the technical approval process caused by the customer may have impact on agreed delivery time (project on hold until approved drawings are received). If the customer fails to

provide above mentioned preconditions, the contractually agreed date of the delivery is postponed accordingly and MAAG AUTOMATIK is entitled to fix an appropriate new delivery date.

9. Approval delay by the purchaser

If delivery is delayed due to circumstances for which the purchaser is responsible, the seller is entitled to store the items being supplied at the purchaser's expense.

10. Warranty

The seller guarantees full legal and material warranty under the provision of clause 11. This warranty expires 12 months after start-up, but at latest 18 months after date of shipment.

Material defects

- 10.1. All parts which were found defective before passing of risk have to be repaired or replaced. The identification of such defects is to be reported immediately in writing. Replaced parts become the property of the seller.
- 10.2. The seller undertakes to carry out within reasonable time all necessary amendments and replacements after agreement with the purchaser. The purchaser is obliged to grant the seller the required time and opportunity, otherwise the seller is exempt from liability for any consequences which may result. Only in urgent cases of danger for the plant or to prevent disproportionate damage, of which the seller must be immediately informed, or if the seller is delayed in solving the defect or has given his agreement, the purchaser has the right to remedy the deficiency himself or have it done by a third party and to claim the reimbursement of the expenses from the seller.
- 10.3. If parts of the delivery have to be replaced or repaired pursuant to Clause 10.2, a new warranty period of six months as from delivery or completion of the repair shall be given for the new or repaired parts.
- 10.4. The seller shall bear all direct costs for repair or replacement deliveries provided the complaint was justified and the costs are not unreasonably high. Costs include the replacement of parts including the shipment, the costs for dismantling and reassembling and for the necessary service technicians and assistants.
- 10.5. If the seller fails to deliver the repaired or replaced items due to a material defect within a reasonable period of time, the purchaser has the right to cancel the contract. If there is only a negligible defect, the purchaser is entitled to receive a price reduction. The right to a price reduction is in other cases excluded.
- 10.6. Special characteristics of the items supplied (such as special service lives, production volumes, etc.) or the products to be manufactured with them are only deemed to be warranted if they have been expressly agreed upon in writing as "warranted characteristics". Any such warranties shall be applicable only until the expiry of the standard warranty period. If warranted characteristics are not or only partially met, the purchaser's only remedies are those given in Clause 10 and 11.
- 10.7. Excluded from the warranty are defects and damage resulting for the following reasons: unsuitable or inappropriate usage, disregard of operating or maintenance instructions and unprofessional service or assembly and inappropriate assembly work carried out by the purchaser or a third party. Also excluded are ordinary wear and tear, deficient or careless treatment, unsuitable equipment or replacement material, inadequate construction work, unsuitable building site, chemical, electrochemical or electrical effects, if not within the seller's control. If the defect is not within the seller's control and excluded from the warranty, the purchaser is obliged to reimburse all costs.
- 10.8. Parts subject to wear and, in particular, defects and damage resulting from ordinary wear and tear, deficient maintenance, disregard of operating instructions or other operating specifications, excessive stress, unsuitable operating materials, use of unsuitable raw materials, chemical or electrolytic effects, fluctuations in voltage and current, and other reasons not within the seller's control are excluded from the warranty and the seller's liability.
- 10.9. Deliveries and services rendered by sub-contractors and outside suppliers stipulated by the purchaser shall be subject to seller's warranty only to the extent of the warranty obligations of the sub-contractors or outside suppliers concerned.
- 10.10. In no event shall the seller be liable for resulting consequences of an inappropriate repair by the purchaser or a third party. The same applies for modifications of the delivered item without prior agreement by the seller.
- 10.11. Claims to defects against the seller can only be made by the purchaser. They are not transferable.

Defects of title

- 10.12. If the usage of the items supplied infringe national industrial rights or copyrights, the seller will obtain, at his cost, the right for the purchaser to further use the items supplied or will modify the supplied items in such a way that no industrial rights are infringed. If this cannot be fulfilled in an economic manner and/or within a reasonable period of time, the purchaser has the right to cancel the contract.
- 10.13. The obligations of the seller mentioned in the previous paragraph are conclusive, subject to clause 11, in the case of infringement of industrial or copyright rights. Only applicable if:
 - The purchaser informs the seller immediately of valid claims concerning infringement of industrial rights or copyrights
 - The purchaser assists the seller in defending himself against valid claims and enables him to carry out the modification measures according to clause 10.12.
 - The supplier has the right to use all methods of defence including agreements out of court
 - That the defect of title is not based on instructions given by the purchaser and
 - That the infringement of a right is not caused by modifications of the supplied item by the purchaser or by usage in a non-contractual way.
- 10.14. Liability of the seller is no longer valid if the purchaser had known about or could have known about the industrial rights.
- 10.15. If claims are raised against the purchaser because of infringement of industrial rights by third parties, the purchaser must only bring evidence of this defect of title if there is a legal judgment against him.

11. Liability

- 11.1. Save as otherwise stated in these General Terms and Conditions in no event shall the purchaser be entitled to claim compensation for damage of any kind other than to the actual items supplied, such as loss of production, loss of profit, loss of use, loss of orders or for any other indirect consequential or economic loss whatsoever.
- 11.2. This exclusion of liability, however, does not apply to unlawful intent or gross negligence on the part of Seller, but does apply to unlawful intent or gross negligence of persons employed or appointed by Seller to perform any of its obligation. This exclusion of liability does not apply as far as it is contrary to compulsory law. Nor shall the exclusion of liability apply in the case of strict liability under the Product Liability Act ("Produkthaftungsgesetz"), for defects of Product causing death or personal injury, or damage to items of property used privately.

12. Arbitration, applicable law

- 12.1. All disputes, controversies or differences, which may arise between the parties in connection with the contract shall be settled amicably. Should the parties not come to an amicable settlement, such case shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators in accordance with the said rules. The court of arbitration shall hold its meeting at Zurich, Switzerland.
- 12.2. The contract shall be governed by Swiss substantive law. The application of international commercial law agreements, particularly the UN commercial law, is excluded.
- 12.3. Sub-agreements, reservations, modifications and supplements only become legally effective when they are confirmed in writing by the seller. This also applies to any agreement to waive the requirement for observance of the written form. If one or more provisions of the contract prove to be wholly or partly ineffective or invalid, this does not affect the effectiveness and validity of the remaining provisions of the contract. The parties to the contract will replace the ineffective or invalid provision by an effective or valid provision which most closely approximates the legal and financial object of that which has to be replaced.