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- CONVEYOR TECHNOLOGY

General Terms and Conditions

Conditions of sale for the delivery of machines and equipment for domestic business.

I General

1. All deliveries and services are subject to these terms and conditions as well as any separate contractual agreements. Deviating terms and conditions of purchase of the purchaser shall not become part of the contract, even upon acceptance of the order, and shall therefore not be expressly contradicted. In the absence of a special agreement, a contract shall come into existence with our written order confirmation.
2. Müssel Maschinenbau GmbH reserves the right of ownership and copyright to drawings, samples, cost estimates and similar information of a physical and non-physical nature - including in electronic form; they may not be made accessible to third parties. We undertake to make information and documents designated as confidential by the purchaser accessible to third parties only with the purchaser's consent.
3. The documents belonging to the offer such as technical data, drawings, illustrations, references to standards as well as information in advertising material are not warranted characteristics unless they are expressly designated as such in writing.
4. We deliver exclusively to commercial customers!

II. Price and payment

1. Our prices are exclusive of statutory value added tax. Unless otherwise agreed, shipping and packaging costs shall be borne by the purchaser. If the goods are delivered packaged, we shall invoice the packaging on a time and material basis; within the framework of the statutory provisions, we shall take back packaging material supplied by us if it is returned to us carriage paid by the buyer within a reasonable period of time.
2. Information provided via phone about prices, delivery options, etc. will only become binding after written confirmation. We are not responsible for hearing errors and misunderstandings when ordering by telephone.
3. We shall only be obliged to grant discounts and other remunerations if such have been agreed in writing at the time of or prior to placing the order.
4. Minimum order value 100 EURO.
5. Unless otherwise agreed, our terms of payment are 30 days without deduction from receipt of invoice and due date.
6. Invoices under 100 EURO as well as assembly, repairs, molds and tooling costs are due immediately and payable net.
7. In the case of orders over 10,000 EURO and in the absence of special agreements, payment shall be made to us without any deduction on account: A 1/3 down payment after receipt of the order confirmation, 1/3 as soon as the purchaser has been informed that the main parts are ready for dispatch, and the remaining amount within one month after transfer of risk.
8. The purchaser shall only be entitled to withhold payment or set off counterclaims to the extent that his counterclaims are undisputed or have been finally determined by a court of law.
9. If the term of payment is exceeded, at the latest from default, we shall be entitled to the statutory default interest. The assertion of further damages caused by default remains reserved.
10. Checks and bills of exchange shall only be accepted on account of payment against reimbursement of the usual bank charges. We are not responsible for the timely submission of checks and bills of exchange. The customer's reference to Art. 53 Para. 1 of the German Bill of Exchange Act is excluded. Interest on arrears and bill charges is payable immediately.
11. If default in payment or other circumstances cast doubt on the creditworthiness of the customer, we shall be entitled to the rights arising from §321 BGB (German Civil Code). We shall then be entitled to demand immediate payment of all our claims and, insofar as we are in possession of bills of exchange, to assert claims against the defaulting party prior to maturity. We only need to make further deliveries if the customer provides security or makes advance payment. Our right of withdrawal from these operations remains unaffected.

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In the event of default in payment, we shall also be entitled to demand the return of the goods after expiry of a reasonable grace period and to prohibit the resale and further processing of the delivered goods. This taking back of goods does not constitute a withdrawal from the contract. The buyer can avert all these legal consequences by providing payment or securities to the amount of our endangered payment claim. Provisions of the German Insolvency Ordinance shall remain unaffected by the above provision.

12. It is generally not possible to take back custom-made products that have been specially manufactured according to customer specifications and there is also no refund of the purchase price. Products from the standard program can only be returned if they are in an as-delivered condition and unused. If delivered goods from the standard program are returned and are not stock items (specially manufactured for the customer order), 10 percent of the invoice value will be deducted from the credit note and the resulting inspection costs will be added. In the case of serial products (stock goods), the testing and processing costs will be deducted from the credit note upon return. In general, the goods should be delivered carriage paid; any additional costs incurred at our expense will be taken into account in the credit note.

III. Delivery time, delivery capability

1. Delivery dates or periods shall only be binding if they have been promised or confirmed by us in writing. Delivery periods begin with the dispatch of the order confirmation, but not before the provision of the documents, approvals and releases to be procured by the purchaser and before receipt of an agreed down payment. Their observance presupposes that all commercial and technical questions have been clarified between the contracting parties. If this is not the case, the delivery period shall be extended accordingly. This shall not apply if we are exclusively responsible for the delay.
2. The delivery period shall be deemed to have been observed if the delivery item has left our premises or notification of readiness for dispatch has been given by the end of the delivery period. Insofar as acceptance is to take place, the acceptance date shall be decisive - except in the case of justified refusal of acceptance - and, alternatively, the date of the notification of readiness for acceptance.
3. If dispatch or acceptance of the delivery item is delayed for reasons for which the purchaser is responsible, the purchaser shall be charged the costs incurred for the delay, starting one month after notification of readiness for dispatch or acceptance.
4. If non-compliance with the delivery period is due to force majeure, labor disputes or other events, as well as defective parts provided and purchased outside our sphere of influence, the delivery period shall be extended accordingly. This shall also apply if the circumstances occur at the supplier's premises.

We shall inform the purchaser of such circumstances as soon as we become aware of them. If the performance of the contract becomes unreasonable for one of the parties, he may withdraw from the contract as a result.

5. Partial deliveries are permissible and can be invoiced separately.
6. If we are in default and we are responsible for this, the buyer may withdraw from the contract after expiry of a reasonable grace period set for us, insofar as the goods are not ready for dispatch by the end of the grace period.
7. If the purchaser suffers demonstrable damage as a result of the delay in delivery for which we are responsible and we have exceeded the grace period, he shall be entitled to demand lump-sum compensation for the delay. For each full week of delay it shall amount to 0.5% in total but not more than 5% of the value of that part of the total delivery which cannot be used on time or in accordance with the contract as a result of the delay. Further claims arising from delay in delivery shall be governed exclusively by Section VII.2 of these Terms and Conditions.

IV. Transfer of risk, acceptance

1. The risk shall pass to the purchaser when the delivery item has left our premises, even in the case that partial deliveries are made or we have assumed other services, e.g. shipping costs or deliveries and lists.

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Insofar as acceptance is to take place, this shall be decisive for the transfer of risk. It must be carried out immediately on the acceptance date, or, alternatively, after our notification of readiness for acceptance. The purchaser may not refuse acceptance if there is an insignificant defect.

2. If dispatch or acceptance is delayed or fails to take place due to circumstances for which we are not responsible, the risk shall pass to the purchaser on the day of notification of dispatch or readiness for acceptance.

V. Retention of title

1. All delivered goods and services shall remain our property until all claims arising from the business relationship have been satisfied, irrespective of the legal basis, including future or conditional claims.
2. The treatment and processing of the reserved goods shall be carried out for us as manufacturer within the meaning of §950 BGB (German Civil Code) without any obligation on our part. The processed goods shall be deemed to be reserved goods within the meaning of Clause V/1. If the reserved goods are processed, combined or mixed with other goods by the purchaser, we shall be entitled to co-ownership of the new item in the ratio of the invoice value of the reserved goods to the invoice value of the other goods used. If our ownership lapses due to combination or mixing, the buyer hereby transfers to us his ownership rights to the new stock or item to the extent of the invoice value of the goods subject to retention of title and shall keep them in safe custody for us free of charge. The resulting co-ownership rights shall be regarded as reserved goods.
3. We are entitled to insure the delivery item against theft, breakage, fire, water and other damage at the expense of the purchaser, unless the purchaser has demonstrably taken out the insurance himself.
4. The purchaser may only sell the delivery item in the ordinary course of business under his normal terms and conditions and as long as he is not in default, provided that the claims from the resale are transferred to us. He shall not be entitled to dispose of the reserved goods in any other way, such as pledging or assigning them by way of security.
In the event of seizure as well as confiscation or other disposal by third parties, he must inform us of this immediately.
5. The buyer's claims from the resale of the reserved goods are hereby assigned to us. They serve as security to the same extent as the reserved goods. If the reserved goods are sold by the buyer together with other goods not sold by us, the assignment of the claim from the resale shall only apply to the amount of the resale value of the reserved goods sold in each case. In the event of the sale of goods in which we have co-ownership shares pursuant to Clause V/2, the assignment of the claim shall apply to the amount of such co-ownership shares.
6. In the event of breach of contract by the purchaser, in particular default in payment, we shall be entitled to take back the delivery item following a reminder and the purchaser shall be obliged to surrender it.
7. Due to the retention of title, we can only demand the return of the delivery item if the purchaser has withdrawn from the contract.
8. The application for the opening of insolvency proceedings entitles us to withdraw from the contract and to demand the immediate return of the delivery item.

VI. Claims for defects

Obvious defects of the goods must be reported to us in writing immediately after delivery. If this is not done, the goods shall be deemed to have been approved. Any defects that are not initially obvious must be reported to us in writing immediately after their discovery. The buyer must give us the opportunity to convince ourselves of the defect, and in particular to make the goods complained of available to us on request; if this does not happen, he cannot make claims based on defects in the goods. For material defects and defects of title of the delivery, we warrant as follows to the exclusion of further claims – subject to Section VII: Material defects:

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1. All such parts shall be repaired or replaced in a condition free of defects (subsequent performance), free of charge at our discretion within a reasonable period of time. Replaced parts become our property.
2. In order to carry out all repairs and replacement deliveries which we deem necessary, the purchaser shall, after consultation with us, give us the necessary time and opportunity; otherwise we as supplier shall be released from liability for the consequences arising therefrom. Only in urgent cases of danger to operational safety or to prevent disproportionately large damage, in which case we must be notified immediately, shall the purchaser have the right, in consultation with us, to remedy the defect himself or have it remedied by third parties and to demand reimbursement of the necessary expenses from us.
3. Of the direct costs arising from the repair or replacement delivery, we shall bear – insofar as the complaint proves to be justified – the costs of the replacement part including dispatch. We shall also bear the costs of dismantling and installation as well as the costs of any necessary provision of the necessary fitters and assistants, including travel costs, insofar as this does not place a disproportionate burden on us and the installation as well as the type of installation of the delivered goods was notified to us when the contract was concluded and approved by us; the ratio to the purchase price of the goods must be reasonable. We shall not assume any expenses arising from the fact that the goods sold have been brought to a location other than the registered office (delivery address) or the branch office of the buyer.
4. Within the framework of the statutory provisions, the buyer shall have the right to withdraw from the contract if – taking into account the statutory exceptions – a reasonable period of time set for the repair or replacement delivery due to a material defect elapses without positive outcome. If there is only an insignificant defect, the purchaser shall only be entitled to a reduction of the contract price. The right to a reduction of the contract price shall otherwise be excluded. Further claims shall be determined in accordance with Section VII.2 of these Terms and Conditions.
5. No warranty shall be assumed in particular in the following cases: unsuitable or improper use, incorrect operation, faulty assembly or commissioning by the purchaser or third parties, natural wear and tear, faulty or negligent treatment, improper maintenance, unsuitable operating materials, defective construction work, unsuitable foundation soil, and thermal, abrasive, chemical, electronic or electrical influences – unless we as supplier are responsible for them.
6. If the purchaser or a third party carries out improper repairs, the supplier shall not be liable for the resulting consequences. The same applies to changes to the delivery item made without the prior consent of the supplier.
7. Further claims are excluded. This applies in particular to claims for compensation for damage that has not occurred to the goods themselves (consequential damage). Our liability arising from the absence of warranted characteristics shall also be governed by Clause IX. We shall assume the expenses necessary for the purpose of rectification or replacement delivery within the framework of our general liability pursuant to Clause IX. Defects of title.
8. If the use of the delivery item leads to the infringement of industrial property rights or copyrights in Germany and if we are responsible for this, we shall, at our expense, procure the right for the purchaser to continue using the delivery item or modify the delivery item in a manner reasonable for the purchaser in such a way that the infringement no longer exists. Does this constitute an entitlement to economically reasonable conditions or to withdraw from the contract within a reasonable period of time? Under the aforementioned conditions, we shall be entitled to withdraw from the contract.
In addition, the purchaser shall indemnify us against any undisputed or legally established claims of the respective holders of industrial property rights.
9. Subject to Section VII.2, the obligations on our part specified in Section VI.7 are final in the event of an infringement of industrial property rights or copyrights. They only exist if: - the purchaser supports us to a reasonable extent in the defense against the asserted claims or enables us to carry out the modification measures in accordance with Section VI.7, - the purchaser is obliged to inform us immediately of any infringement of industrial property rights or copyrights which may have been asserted.

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all defensive measures including out-of-court settlements remain reserved for us, - the defect of title is not based on a statement of the purchaser, and - the infringement of rights was not caused by the fact that the purchaser has arbitrarily modified the delivery item or used it in a non-contractual manner.

VII. Liability

1. If the delivery item cannot be used by the purchaser in accordance with the contract due to our fault as a result of omitted or faulty execution of suggestions and consultations made before or after conclusion of the contract or due to the breach of other contractual ancillary obligations – in particular instructions for operation and maintenance of the delivery item – the provisions of Sections VI and VII.2 shall apply accordingly to the exclusion of further claims by the purchaser.
2. For damages which have not occurred to the delivery item itself, we shall only be liable – irrespective of the legal basis – in the following cases
 - a) in the event of intent
 - b) in the event of gross negligence on the part of executive bodies or executives,
 - c) in the event of culpable injury to life, body or health,
 - d) in the event of defects in the delivery item, insofar as liability is assumed under the Product Liability Act for personal injury or property damage to privately used items.

In the event of culpable breach of essential contractual obligations, we shall also be liable for gross negligence on the part of non-executive employees and for slight negligence, in the latter case limited to the reasonably foreseeable damage typical of the contract. Further claims are excluded.

VIII. Limitation

All claims of the purchaser – irrespective of the legal basis – shall become statute-barred after 12 months. The statutory time limits shall apply to claims for damages in accordance with Section VII.2.a – e. They shall also apply to defects in a building or to delivery items which have been used for a building in accordance with their usual use and which have caused its defectiveness.

IX. Software usage

Insofar as software is included in the scope of delivery, the purchaser shall be granted a non-exclusive right to use the delivered software including its documentation. It is provided for use on the delivery item intended for this purpose. Use of the software on more than one system is prohibited. The purchaser may only copy, revise, translate or convert the object code of the software to the legally reliable extent (§§ 69 a ff. UrhG (German Copyright Law)). The purchaser undertakes not to remove or alter manufacturer's details – in particular copyright notices – without the prior express consent of the supplier. The above shall also apply to the technical documentation provided, including drawings. All other rights to the software and the documentation including copies shall remain with us or with the software supplier. Sublicensing is not permissible.

X. Applicable law, place of jurisdiction

1. All legal relationships between us and the purchaser shall be governed exclusively by the laws of the Federal Republic of Germany applicable to legal relationships between domestic parties.
2. The place of jurisdiction is the court responsible for us. However, the supplier shall be entitled to instigate legal action at the purchaser's head office.

Marktredwitz, 01/2024