

SAAR-MOSEL BAUMASCHINEN GMBH // GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY

This English version of our General Terms and Conditions of Sale and Delivery is for information purposes only. In no case whatsoever shall these General Terms and Conditions of Sale and Delivery constitute a part of any contract concluded. When in doubt about meaning and intent of any clause of these General Terms and Conditions of Sale and Delivery the original German version shall have precedence over any other version.

I. GENERAL PROVISIONS

1. Contract conclusion:

Any contract conclusions and agreements, including any side agreements shall only be binding upon us after confirmation in writing by us. Hence, any arrangements by our employees or representatives shall be considered made subject to our confirmation in writing. Any terms of purchase of our clients shall be considered void with respect to any contract concluded with us, even if we do not raise express objections to them. Our Terms and Conditions of Delivery shall also apply to any future deliveries or services performed.

2. Payment terms:

Absent any other agreement, all invoices – including invoices for partial deliveries – shall be paid in cash immediately upon delivery of the commodities and invoice receipt, regardless of receipt of commodities and without prejudice to the right of notice of defect, excluding the right to offset and the right of retention. Cheques shall only be accepted on account of performance.

In the event of several existing concluded contracts, we expressly reserve the right to choose to book incoming payments by our client against any due accounts receivable.

3. Place of fulfilment, place of jurisdiction, applicable law, contract language:

Sole place of jurisdiction for all disputes regarding the obligations of our clients, including cheque obligations, shall be Saarbrücken, Germany. Sole applicable law shall be the law of the Federal Republic of Germany. Contract language is German.

4. Lease contracts:

If no other arrangements have been agreed in the lease contract, these Terms of Delivery shall also apply to any kind concluded lease contracts.

5. Offsetting:

Errors in the offer or order confirmation shall entitle us to withdraw from a contract without granting the purchasing party any right to any type of claim for compensation, unless in the event of intent or gross negligence.

6. If the purchaser is not a merchant in terms of the commercial code, then the applicable provisions with respect to purchases among merchants of the Handelsgesetzbuch (HGB – German Commercial Code) shall be considered agreed upon.

II. DELIVERY PERFORMANCE

1. Force Majeure:

Events of Force Majeure shall entitle us to delay the delivery by the time of duration of obstructing event plus an appropriate start-up time, or else to withdraw from the contract entirely or from that part of contract that has not yet been fulfilled. Any circumstances, that considerably exacerbate the delivery for us or even render it impossible, including but not limited to fire, traffic blocks, shortage of raw material, interruption of operation or transport, irrespective of whether they occur on our side or on the side of a sub supplier, shall be considered equal to force majeure. The client may request a declaration from us, whether we will deliver within an appropriate amount of time or whether we wish to withdraw from the contract. If we fail to make any declaration, then the client shall be entitled to withdraw from the contract. Any kind of compensation shall be excluded, unless in the event of intent or gross negligence.

2. Delivery time:

The delivery period shall commence with the date of our order confirmation, but not before all details regarding the execution of the contract have been clarified. The delivery period shall be considered adhered to by providing a notice of the commodities being ready for shipment to the client, unless the shipment is rendered impossible due to gross negligence on our side. The agreed delivery period shall be extended – without prejudice to our rights arising from defaulting on the client's side – by that period of time, in which the client is defaulting in terms of his obligations arising from this or any other transaction made with us. Us giving an express notice of default shall not be required. The client may not reject partial deliveries. If the agreed delivery date is exceeded by more than 4 (four) weeks due to gross negligence, or by more than 8 (eight) weeks for overseas make, then the client shall be entitled to set us an appropriate extended deadline. If we fail to deliver the commodities by the date of expiry of the aforementioned extended deadline, then the client may withdraw from the contract by sending a corresponding declaration in writing. Claims for compensation of any kind shall be excluded, unless in the event of intent or gross negligence.

3. Prices:

The agreed prices are based on the relevant factory prices available to us at the date of conclusion of the contract.

If the prices have increased by the date of delivery, then we shall be entitled to adjust the agreed prices accordingly. These prices are net prices plus value added tax applicable at the date of delivery or performance, ex works, excluding loading and packaging.

4. Notices of defect:

Notices of defect shall be provided within one week after receipt of the commodities at the point of destination. Aforementioned notice must be verifiably dispatched within this period of time, by means of standard letter, telegraph, e-mail or telefax. Notices for hidden defects, that are impossible to detect by close examination within this period of time, shall be provided immediately after detection or latest six weeks after receipt of the commodities in the same manner as patent defects. The client may not remedy any defects himself without our prior express consent. The claim for defects shall become time-barred latest one month after we have rejected the notice of defects. Any agreed warranty shall become void, if the client acts to remedy a defect without authorisation. Should we consider the notice of defect to be justified, then we shall, at our sole discretion, either be entitled to remedy the defect within the scope of warranty in terms of Clause 8 or agree to a financial settlement. Any further claims by the client, irrespective of the kind, in particular for any damages arising indirectly from the defect, shall be excluded.

5. Acceptance of commodities:

Any used commodity shall be accepted prior to shipment by way of inspection at the location of the commodity. If the client fails to inspect the commodity, then they shall be considered properly delivered and accepted at the time of loading or collection of the commodity. Delivery and acceptance of the commodity shall be considered properly performed, if the client fails to call off the commodity within one week after receiving a notice of the commodity being ready for shipment. Any warranty for used devices, equipment or spare parts shall be excluded. If the contracting party is a consumer in terms of the Bürgerliches Gesetzbuch (BGB – German Civil Code), then the term of warranty shall be 12 months commencing at the date of delivery. Whereas the devices have been entirely or partially reconditioned as agreed or where the existence of certain characteristics of the commodity has been confirmed explicitly and in writing, the following shall apply to the warranty, while excluding any further claims: The warranty shall apply only to those parts that have been subject to our reconditioning as agreed in the contract. Any corresponding complaints may only be brought forward within one week after receipt of the commodity as provided in Clause 4, paragraph 1 to be valid. Clause 4, final paragraph shall apply accordingly. In all other cases, any claims for redhibition or alteration by the client for used machines shall be excluded.

6. Measures, weights, etc.:

Any details regarding technical properties, weights, output, quality, illustrations, etc. of the delivered commodities are approximations only. There shall be no obligation to notify the client about any technical modifications occurring after concluding the contract.

7. Shipment and transfer of risk:

The risks shall pass onto the client upon handover to the haulier, freight forwarder or collector latest when leaving the factory or storage location, even if a FOB or CIF transaction has been agreed. For lack of any relevant agreement, shipment route and means of transport shall be subject to our discretion to the exclusion of any liability whatsoever. Any material announced as being ready for shipment shall be called off immediately. Failing this, we shall be entitled to store the material at the expense and risk of the client at our discretion and to charge it as delivered ex works or ex storage location. Any insurance premium for transport insurance shall be borne by the client.

8. Liability for defects:

- The seller or the entrepreneur shall warrant in terms of below provisions for delivered new commodities or commodities to be manufactured (supplied work) to be free of any material defects and legal defects. The liability for defects shall be granted for a period of 12 months commencing on the date of delivery to the first ultimate buyer or – where construction equipment is concerned – for 2,000 operating hours, whichever of the aforementioned events occurs first.
- The liability for defects shall be primarily aimed at supplementary performance, i.e. remedy of a defect or replacement delivery. The purchasing or ordering party shall only be entitled to choose to abate the purchase price or the payment, or alternatively withdraw from the purchase contract or the contract for work and labour, if the supplementary performance fails. Supplementary performance shall be considered failed after the second unsuccessful attempt, if no other consequences arise from the type of commodity delivered or the type of defect or the respective circumstances.
- The right to claim compensation for material defects or legal defects or reimbursement for wasted expenditure shall herewith be expressly excluded. However, this shall not apply to damages incurred to the life, body or health of individuals. This shall also not apply to any other damages incurred as a result from a violation of duty due to gross negligence or intent by the seller or the entrepreneur or their legal representative or vicarious agents.
- The aforementioned exclusion of liability in terms of Clause 3 shall apply to any possible violation of duty by the seller or the entrepreneur, meaning not only to the liability for defects, but also to the impossibility, defaulting or violation of any performance-related obligations and to the violation of non-performance-related obligations.
- Used articles of sale are sold excluding any liability for material defects. This exclusion shall not apply to claims for compensation due to liability for material defects incurred as a result from a violation of duty in gross negligence or intent by the contractor, including injuries to the life, body and health of individuals.
- If the contracting party or ultimate buyer is a consumer, then the to a large extent compelling legal rights pertaining to the sale of consumer goods shall apply. This notwithstanding, the following terms shall be agreed:
 - The liability for material defects or legal defects for used commodities shall be granted for a period of 12 months commencing on the date of delivery to the consumer.
 - The exclusion of liability in terms of the aforementioned Clauses 3 and 4 shall also apply to the relationship between entrepreneur and consumer.

We shall not accept any liability for defects regarding the fitness of any device to be used for a certain purpose. This shall be the sole responsibility of the client. No liability for defects whatsoever shall be assumed for rubber parts or steel wire rope.

9. Assembly technicians:

Our assembly technicians are selected with due care. The work on behalf, at the risk and the liability of the client. Any indicated dates and times concerning the beginning and ending of the provisioning of assembly technicians are non-committal. Any incurred delays shall not warrant any claims for compensation. Assembly technicians supplied in vain through no fault of our own will be charged to the client. The following items will be charged: Our applicable hourly rates for regular working hours up to 8 (eight) hours per day for working time, travelling time and waiting time; for overtime and working time on Sundays and bank holidays, a defined surcharge plus an accommodation allowance substituting expenses to which the assembly technician is entitled, is added. Our applicable rate per kilometre for any journey with our fully equipped mobile workshop. The ordering party shall provide for any required assistant personnel, equipment and material at his own risk and expense. The working hours stated in the work report (assembly report) shall determine the number of hours charged. Invoices for the assembly, being cash expenditures, shall be paid in full in cash upon receipt of invoice. Our assembly technicians are not permitted to make decisions in terms of warranty.

III. RETENTION OF TITLE AND DEFAULTING

1. Retention of title:

The ownership of the delivered commodity shall be transferred to the client only upon payment in full of all our deliveries and services, and subject to the client not being in arrears with any of his debts resulting from other concluded contracts at that time. When balancing the client's account, the retention of title shall serve to secure any accounts receivable shown in the balance. The payment terms initially agreed in each concluded contract determine the balance liability. If the estimated value of the retained commodity serving as security exceeds the unpaid account receivable of the client by more than 20%, we shall be obliged to release securities to that extent upon request of the client. Any accommodations for payment granted afterwards shall remain unaffected. Until the ownership is transferred, the client shall take out a machinery insurance policy covering the replacement value of the delivered commodity plus any damages resulting from transport risk and acts of war. Any insurance claims made by the client shall be considered assigned to us in their entirety. The ordering party shall hand over the so-called guarantee certificate of the insurance company to us. If the customer fails to prove having an insurance or fails to hand over the guarantee certificate, we shall be entitled to take out an insurance policy for the delivered commodity and charge it to the client. While we are still the owners, pledging and assigning as security or granting any other future or mandatory rights to the delivered commodity shall be permitted only with our consent in writing. If the client sells or leases out the delivered commodity, then the client's accounts receivable of the buyer or leaseholder shall be considered ceded to us in advance up to the amount of accounts receivable of the client. Upon our request, the client shall be obliged to notify the buyer of having ceded the accounts receivable, and to disclose any information and hand over any documents required to enforce our rights against the buyer. If the commodity is seized by a third party or if our property is jeopardised in any way by actions of a third party, the client is obliged to notify us without delay, adding the attachment report and an affidavit, that the item claimed by the third party is our property. Any objection that the item in our ownership is essential to sustain the client's subsistence or his business, shall be considered rejected.

2. Defaulting:

If the client fails to comply with the payment and delivery terms, we shall be entitled, at the client's expense, to retrieve the delivered commodity from all current contracts without having to set the client an extended deadline, to the exclusion of any right of retention and at our own disposal of these devices or items. To this effect, the client, upon our request, shall be obliged to return the commodity including any accessories, to the plant from where they were delivered or to us free of charge and at his own risk. These circumstances or any circumstances lowering the client's creditworthiness, that become known after concluding the contract, shall result in all accounts receivable being due at once and shall entitle us to withdraw from all current contracts without having to set an extended deadline, or to claim compensation for non-performance. If we withdraw from the contract because the customer is in arrears with his obligation to pay the purchase price or to accept the purchase item and does not comply despite setting a grace period, we are entitled to a lump sum compensation of 10% of the net purchase price.

3. Validity of the delivery terms:

Should one or more of the above provisions be invalid or void, then the validity of the other provisions shall remain unaffected. All other provisions shall remain in effect. The invalid or void provisions shall be interpreted to the effect, that the intended commercial purpose is achieved. If interpreting the provision is impossible, then the parties shall be obliged to reach an agreement that comes as close as possible to the commercial purpose of the invalid or void provision.