

## **General Terms and Conditions (GT&C)**

of SK Maschinen-Service GmbH, represented by the Management, Tackweg 4, 47918 Tönisvorst  
(hereinafter referred to as: SK Maschinen)

As of: 07/2022

### **§ 1 General / Scope of application**

1.1 Our Terms and Conditions of Sale shall apply exclusively; we shall not recognise any terms and conditions of customers that conflict with or deviate from our Terms and Conditions of Sale unless we expressly grant our consent thereto in writing. Our Terms and Conditions of Sale shall also apply if we execute the delivery to the customer without any reservations in acknowledgement of conflicting or deviating terms and conditions of the customer.

1.2 In the case of a framework agreement between us and the customer, these GTC shall apply to the framework agreement as well as to the individual order.

1.3 Any agreements concluded between us and the customer in individual cases (including ancillary agreements, supplements and amendments) shall in any case take precedence over these GTC.

1.4 These GTC shall apply exclusively to entrepreneurs. An entrepreneur within the meaning of these GTC is a natural or legal person or a partnership with legal capacity who, when concluding a legal transaction, acts in the execution of his or her commercial or independent professional activity (§ 14 BGB).

### **§ 2 Offer / Offer documentation**

2.1 If the order can be qualified as an offer pursuant to § 145 of the German Civil Code (BGB), we may accept it within two (2) weeks.

2.2 Our offers are subject to change and non-binding. This shall also apply to documents included in the offer, such as illustrations, drawings, weights and dimensions, insofar as these are not expressly declared to be binding.

2.3 We reserve title and copyrights to illustrations, calculations and other documents. This shall also apply to any written documents designated as "confidential". Any transfer to third parties requires our express prior written consent.

2.4 Orders placed by the customer are binding on the customer. The delivery or the invoice shall be deemed to constitute the order confirmation unless we send the customer a written confirmation indicating otherwise.

2.5 Our written confirmation is solely authoritative for the content of orders and agreements, unless the customer immediately objects to this in writing. This shall apply in particular in the case of verbal or telephone orders and agreements.

### **§ 3 Prices / Terms of Payment**

3.1 Our prices shall apply "ex works", excluding freight, customs, postage, packaging, insurance and other expenses, unless otherwise stated in the order confirmation; these shall be invoiced separately. The packaging shall be calculated at cost price; its return is excluded.

3.2 Our prices are not inclusive of the statutory value-added tax; this shall be indicated separately in the invoice at the statutory rate applicable on the day of invoicing.

3.3 Our invoices are due for payment immediately and without deduction.

3.4 The only payment method we accept is prepayment. In the event that the customer is in default of payment, we shall be entitled to demand interest on arrears in the amount of nine percent (9%) above the base interest rate. We reserve the right to claim specific damages for delay.

### **§ 4 Delivery time**

4.1 Delivery dates and deadlines shall be deemed non-binding unless we have expressly designated them as binding in a written confirmation. If the customer fails to clarify all details of the order in due time or if the customer fails to provide all preliminary services in due time, the delivery dates shall be extended accordingly.

4.2 In the event of delays in delivery due to operational disruptions, official measures, failure to deliver to us or force majeure, the delivery period shall be extended accordingly. Force majeure shall also be deemed to exist in the event of industrial action, including strikes and lawful lockouts, at our company or at our suppliers.

4.3 The beginning of the delivery period indicated by us shall be subject to prior clarification of all technical questions, if any. Furthermore, compliance with our delivery obligation requires prior timely and proper fulfilment of the customer's obligation. The right to plead non-performance of the contract remains reserved.

4.4 We are entitled to make partial deliveries insofar as these do not fall short of the reasonable minimum.

4.5 The customer shall check and acknowledge the delivery note without delay. Any objections shall be reported to us in writing without delay. Otherwise, the acknowledged delivery quantity shall be deemed accepted.

4.6 The risk of accidental loss and accidental deterioration of the sold goods shall pass to the customer as soon as we have delivered the purchased goods to the forwarding agent, the carrier or any other person or institution designated to carry out the shipment.

4.7 In the event that the customer is otherwise in default of acceptance or culpably violates other duties to cooperate, we shall be entitled to demand compensation for the damage incurred by us in this respect, including any additional expenses. The right to further claims remains reserved.

4.8 According to the statutory provisions, we shall be liable if a delay in delivery is due to an intentional or grossly negligent breach of contract on our part; any fault on the part of our representatives or vicarious agents is attributable to us. Our liability for damages shall be limited to the foreseeable, typically occurring damage, unless the delay in delivery is due to an intentional breach of contract attributable to us.

4.9 Should the customer incur damage as a result of a delay in delivery that is attributable to us, he/she may demand compensation for such damage excluding any further claims for compensation in the amount of half a per cent (0.5%) for each week of delay, however, in the maximum amount of five per cent (5%) of the value of the affected part of the entire delivery. If the delivery is delayed, the customer may withdraw from the contract after setting a reasonable period of grace and with the express declaration that he/she refuses to accept the performance after the expiry of this period, in the case that the performance is not effected within the period of grace.

4.10 Further legal claims and rights of the customer remain reserved.

## **§ 5 Delivery**

5.1 Delivery "ex works" is deemed to have been agreed upon, unless otherwise stated in the order confirmation.

5.2 The delivery shall be covered by transport insurance at the customer's request; the costs incurred in this respect shall be borne by the customer.

## **§ 6 Warranty / Liability**

6.1 Any claims for defects on the part of the customer shall be subject to the condition that the customer has duly complied with his/her obligations to inspect the goods and to give notice of defects pursuant to § 377 of the German Commercial Code (HGB).

6.2 If claims for liability for defects are asserted by the customer, we shall have the right to choose the form of supplementary performance.

6.3 In the case of new goods, the limitation period for defects is one (1) year from delivery of the goods. In the case of used goods, the rights and claims due to defects are excluded; Customers purchase our goods as seen. Features are only guaranteed if they are expressly designated as such in the contract. Verbal information and information in our documents do not contain any assurances. Samples, models, dimensions, DIN regulations, service descriptions and other information about the condition of the delivery item serve as a specification and are not guaranteed properties.

As far as the materials to be used by us are contractually specified, this only guarantees compliance with the specification and not the suitability of the materials for the contractual purpose. Damages caused by external influences, improper installation and handling, poor operation or maintenance, corrosion or normal wear and tear are excluded from the warranty. In the latter case, the warranty does not extend to the wear and tear of wearing parts. Wear parts are all rotating parts, all drive parts and tools. The limitation period shall not recommence if a replacement delivery is made within the scope of liability for defects.

6.4 The limitations of liability and shortened time limits set out in clause 6.3 shall not apply a) to claims for damages and reimbursement of expenses of the customer, b) in the event that we have fraudulently concealed the defect, c) to goods which have been used for a building in accordance with their customary use and have caused its defectiveness, d) to any existing obligation on our part to provide updates for digital products, and e) in the case of contracts for the delivery of goods with digital elements.

6.5 If the customer asserts claims for damages based on intent or gross negligence, including intent or gross negligence on the part of our representatives or vicarious agents, we shall be liable according to

the statutory provisions. Insofar as we are not accused of intentional breach of contract, the liability for damages shall be limited to the foreseeable, commonly occurring damage.

6.6 Furthermore, we shall be liable in accordance with the statutory provisions insofar as we culpably violate obligations the violation of which jeopardises the achievement of the purpose of the contract (essential contractual obligations) or the fulfilment of which makes the proper performance of the contract possible in the first place and on the observance of which the customer regularly relies (cardinal obligations), however in each case only for the foreseeable damage that is common to the contract. We shall not be liable for the slightly negligent breach of obligations other than the previously mentioned.

6.7 Liability for culpable injury to life, limb or health remains unaffected; this shall also apply to mandatory liability under the Product Liability Act.

6.8 The liability is excluded unless otherwise stipulated above.

6.9 Insofar as our liability for damages is excluded or limited, this shall also apply with regard to the personal liability for damages of our employees, representatives and vicarious agents.

## **§ 7 Reservation of title**

7.1 We reserve title to the object of sale until receipt of all payments under the contract. In the event of conduct by the customer that violates the contract, in particular in the event of default of payment, we shall be entitled to take the purchased item back. Any repossession will also result in our withdrawal from the contract.

Reclaiming the object of sale by us shall constitute a withdrawal from the contract. Upon reclaiming the object of sale, we shall be entitled to dispose of it; the proceeds of such disposal shall be set off against the customer's liabilities - after deduction of reasonable costs of disposal.

7.2 The customer is obliged to handle the purchased item with due care; in particular, he/she is obliged to insure it adequately at his/her own expense. If maintenance and inspection work is required, the customer is obliged to execute such work in a timely manner at his/her own expense.

7.3 In the event of seizures or other interventions by third parties, the customer shall notify us immediately in writing so that we can take legal action in accordance with § 771 of the German Code of Civil Procedure (ZPO). If the third party is incapable of reimbursing us for the judicial and extrajudicial costs of an action pursuant to § 771 ZPO, the customer shall be liable for the loss incurred by us.

7.4 The customer is entitled to resell the purchased item in the ordinary course of business; however, herewith all receivables in the amount of the final amount (including VAT) of our receivables accruing to the customer from the resale against his/her customers or third parties are already assigned to us, irrespective of whether the object of sale has been resold without or after processing. The customer remains authorised to collect this claim even after the assignment. Our right to collect these claim ourselves remains unaffected by this. However, we undertake not to collect the claim as long as the customer meets his/her payment obligations from the proceeds collected, is not in default of payment and, in particular, no application for the opening of composition or insolvency proceedings has been filed or payments have not been suspended. If this is the case, however, we may demand that the customer informs us of the assigned claims and their debtors, provides all information required for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment.

7.5 The processing or transformation of the purchased item by the customer shall always be performed on our behalf.

If the purchased item is processed along with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the value of the purchased item (final amount, including VAT) to the other processed items at the time of processing. In all other respects, the same shall apply to the item created in the course of processing as to the purchased item delivered under reservation of title.

7.6 If the purchased item is inseparably merged with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the value of the purchased item (final amount, including VAT) to the other merged items at the time of the integration. If the integration takes place in such a way that the customer's item is to be regarded as the main item, it shall be deemed to be agreed that the customer transfers co-ownership to us on a pro rata basis. The customer shall safeguard the sole ownership or co-ownership established on our behalf.

7.7 Furthermore, the customer shall assign to us the claims to secure our claims against him/her which arise against a third party by connecting the purchased item with property.

7.8 We undertake to release the securities to which we are entitled at the customer's request to the extent that the realisable value of our securities exceeds the claims to be secured by more than ten per cent (10%); the choice of the securities to be released shall be ours.

#### **§ 8 Applicable Law**

All our legal relations with the customer shall be governed by the law of the Federal Republic of Germany to the exclusion of the laws on the international sale of movable goods. The provisions of the UN Convention on Contracts for the International Sale of Goods shall expressly not apply.

#### **§ 9 Place of jurisdiction**

9.1 The exclusive place of jurisdiction for all disputes arising from this contract is our registered office.

9.2 If the registered office of the customer is outside the territory of the Federal Republic of Germany, our registered office shall be the exclusive place of jurisdiction for all disputes arising from this contract.

9.3 In the cases mentioned above, however, we shall in any case be entitled to file a suit with the court at the customer's registered office