General Delivery Terms for Schnelldorfer Maschinenbau GmbH, Kappelweg 6, D-91625 Schnelldorf (as of 01.2016)

§ 1 Scope of Application

(1) Unless otherwise expressly agreed, the following General Delivery Terms for Schnelldorfer Maschinenbau GmbH (hereinafter „Company") shall apply for all contracts, deliveries and other performances in business transactions with entrepreneurs as defined by § 310 German Civil Code (hereinafter „Customer"). These General Delivery Terms shall also apply for all future business transactions even if they are not expressly agreed upon.

(2) Terms and conditions of the Customer which contradict or deviate from these General Delivery Terms, in particular purchase conditions, are invalid unless the Company accepts them expressly in writing.

§ 2 Offers and closure of the contract

(1) All offers of the Company are subject to confirmation and without obligation, that is, they may only be construed as a request to submit an offer.

(2) A contract is concluded only by written sales confirmation of the Company or tacitly by the execution of the order and is governed exclusively by the provisions of the sales confirmation and/or these General Delivery Terms. In case of tacit acceptance of the offer the delivery note or the commercial invoice constitute a sales confirmation.

(3) Verbal confirmations of the Company, its employees or sales agents which are issued before conclusion of the contract are non-binding and are replaced by the written contract, as far as not otherwise agreed. Amendments or supplements confirmed by the Company, its employees or sales agents after conclusion of the contract are only valid in writing. Verbal declarations of persons who are authorised to represent the Company without restriction are not affected.

(4) If circumstances become known to the Company after conclusion of the contract (e.g., default of the Customer concerning former deliveries) which indicate at the Company's discretion that the claim to payment is at risk owing to the Customer's lack of adequate financial capacity, the Company is entitled to withdraw from the contract and to call due claims for partial deliveries, unless the Customer agrees within an adequate period to delivery versus payment or provides to the Company security in the amount of the outstanding claims.

(5) In case of suspension of payment, insolvency or financial collapse the Company is entitled to terminate all existing contracts for important reason with immediate effect.

(6) The liability of the Company is restricted to its obligations as a seller arising from the sale and purchase contracts. The Company does not assume any consultancy obligations, unless otherwise expressly agreed in writing.

(7) By entering into the contract the Customer acknowledges that he has informed himself about the kind and the extent of the performances by examination of available plans and service descriptions. The Company is not liable for documents, subscriptions and plans in case of evident mistakes, write errors and arithmetic mistakes. The Customer shall notify the Company of such mistakes so that the purchase order or the execution of the order can be corrected or be renewed. This shall also apply, in the event the documents given to the Customer are not completely.

§ 3 Data protection

The Company stores and uses personal data of the Customer for the purpose of the performance of the contract. The data are also used to marketing purposes, as far as the Customer does not contradict according to § 28 para. 4 German Data Protection Act.

§ 4 Dispatch, passage of risk and default

(1) Unless otherwise expressly agreed, delivery is „EXW ex works" (Incoterms 2010). The loading and the unloading of the goods are - unless otherwise agreed - not subject matter of the contract. The risk of accidental loss or deterioration of the goods shall pass to the Customer, the freight forwarder, the carrier as from the time of the disposal of the goods to be delivered, however no later than the time when the goods leave the works or the warehouse of the Company. The risk also passes to the Customer in the event the goods are delivered from the works or the warehouse of a third party upon order of the Company (so-called third-party deal).

(2) In case the delivery was agreed as „no delivery charge" the deliveries are made at the Customer's risk. The Company bears only the costs for transport and insurance. If the dispatch is delayed by request or by fault of the Customer, the goods are stored at his costs and risk. The same shall apply in case the dispatch or delivery is delayed on grounds of force majeure or obstacles which occur after the conclusion of the contract and which are not in the responsibility of the Company. In this case the notification of dispatch or of the delivery will be deemed the dispatch of the goods.

(3) Appropriate partial deliveries are admissible in a reasonable scope. They are admissible in particular in the event the partial delivery is of use for the Customer within the scope of the contractual purpose and the delivery of the remaining ordered goods is guaranteed.

(4) The date of delivery is extended, also within default, adequately in the event of force majeure and of all unforeseen obstacles occurring after conclusion of the contract which are not in the responsibility of the Company (including but not limited to operational disturbances, strike, lockout or disturbance of the traffic routes), as far as the delivery is affected by these obstacles considerably. This shall also apply to circumstances affecting the suppliers of the Company and their subcontractors, in particular if these persons cannot supply the Company in time despite of the conclusion of a supply agreement or an order. The Company shall inform the Customer about the beginning and the ending of such obstacles as soon as possible. The Customer may request a declaration from the Company, stating whether the Company rescinds the contract or whether it will deliver within reasonable time. If the Company does not issue a declaration in due time, the Customer may rescind the contract. In this case any and all claims for damages and/or reimbursement of expenses vis-à-vis the Company are excluded. These provisions shall apply to the Customer respectively in case the Customer is affected by such obstacles.

(5) In case of a delay of delivery the Customer is obliged to declare upon request of the Company within an appropriate period whether he insists on delivery or whether he rescinds the contract on grounds of the delay and/or requires compensation instead of the performance. If the Customer does not issue a declaration in due time in writing, his silence constitutes a waiver of the fulfillment of delivery.

(6) The Company is liable for timely delivery only for own fault and that of its agents. The Company is not liable for the fault of its suppliers. The Company is obliged to assign to the Customer possible claims towards its suppliers.

(7) It is known to the Customer that the export of certain goods may justify obligations to obtain a permit (e.g., because of the intended purpose or the final destination) and the appropriate national like international export regulations are to be noticed.

(8) Deliveries to the Customer are under the reservation of national or international regulations of the foreign trade legislation, an embargo or other legal bans.

§ 5 Prices and payment

(1) The prices are exclusive of value added tax.

(2) Unless otherwise expressly agreed, payment is due upon reception of the goods and invoice without deduction immediately. The same shall apply in case of repairs.

(3) The Company reserves the right to accept cheques in lieu of fulfilment. Without its approval fulfilment is not effected, the issuing of checqes is only made on account of performance. As far as the Company accepts the payment with cheques in particular cases, credit notes are issued subject to receipt and minus disbursements on the day on which the Company is able to access the value of the cheque.

(4) Payment by bill of exchange is expressly excluded and is not accepted.

(5) Within default of the Customer the Company is entitled to claim interest for delay at the rate of 9 percent points above the applicable base rate.

(6) If the Customer is in default, the Company is entitled to take back the goods after previous reminder. As far as the access to the premises of the Customer is necessary for the taking back of the goods, he already undertakes to give his consent in addition and to tolerate the abstraction. The taking back is no rescission of the contract. If the goods were delivered in the course of an individual contract outside an existing business relationship, the Company undertakes to rescind the contract before taking back the goods.
(7) A payment refusal or a payment deduction are excluded in case the defect of the goods or other objections were known to the Customer at the time of conclusion of the contract.
(8) The Customer is entitled to refuse payment or to set off vis-à-vis due claims of the Company arising from the aggregate balance of the business relationship or from an individual contract, as far as the counterclaims of the Customer have been legally established or expressly acknowledged by the Company. The silence of the Company on the assertion of such counterclaims does not constitute an acknowledgement.
(9) If the Customer is in default of acceptance of delivery for four months after conclusion of the contract, the Company is entitled to increase prices vis-à-vis the Customer in accordance with price rises of its manufacturers and suppliers, unless otherwise expressly agreed.

§ 6 Retention of title
(1) The delivered products shall remain the property of the Company until all claims of the Company arising from the business relationship with the Customer have been settled.
(2) The retained title shall serve as security for the balance owned to the Company in a running account. The Customer is authorised to sell goods subject to retention of title (hereinafter „Retained Products") only in the ordinary course of business. The Customer does not have the right to pledge the Retained Products, transfer them as security or make any other disposition of them which could endanger the title of the Company. The Customer assigns its claims arising from resale of the Retained Products to the Company already now; the Company accepts the assignment already as of now.
(3) Any processing or conversion of the Retained Products by the Customer is at all times carried out on behalf of the Company. If the Retained Products are processed with other goods, the Company shall acquire joint ownership of the new item in the proportion of the value of the Retained Products to that of the other processed goods at the time of processing. In respect of the new item created by means of processing, the same shall apply in all other respects as for products delivered subject to retention of title.
(4) If the Retained Products are combined with other goods, the Company acquires joint ownership of the new item in the proportion of the value of the Retained Products to that of the other goods at the time of combination. If they are combined in such a way that the Customer's item can be regarded as the main item, the parties agree that the Customer assign joint ownership pro rata to the Company. The Customer shall secure the joint ownership thus created on behalf of the Company.
(5) If the Customer sells the Retained Products after processing or combination with other goods or together with other goods, the claims receivable shall be assigned only in the amount of that portion corresponding to the price agreed between the Company and the Customer plus a security margin of 10 per cent of that price.
(6) The Customer is revocably authorised to collect the claims assigned to the Company in his own name on a fiduciary basis for the Company. The Company may revoke this authorisation and the right to resell the Retained Products if the customer is in default vis-à-vis the Company with essential obligations such as payment; in the event of revocation, the Company shall have the right to collect the claims itself.
(7) The Customer shall provide the Company at any time with all information requested about the Retained Products or about claims which have been assigned to the Company pursuant to these General Delivery Terms. The Customer shall notify the Company immediately of any access or claims to Retained Products by third parties and hand over the necessary documents. The Customer shall at the same time notify the retention of title of the Company to the third party. The costs incurred by the defence of such claims shall be borne by the Customer.
(8) The Customer is obliged to handle the Retained Products with due care for the duration of the retention of title. If the realisable value of the securities exceeds the total secured claims of the Company by more than 10 per cent, the Customer may demand that they be released to the same extent.
(9) If the Customer is in default vis-à-vis the Company with essential obligations such as payment, and if the Company rescinds the contract, the Company may, irrespective of other rights, demand the surrender of the Retained Products and sell them elsewhere in order to satisfy its due claims against the Customer. In this event, the Customer shall grant to the Company or to the Company's agent immediate access to the Retained Products and surrender the Retained Products immediately.
(10) In the case of deliveries to other jurisdictions in which the foregoing provisions regarding retention of title do not have the same security effect as in Germany, the Customer shall use his best efforts to provide the Company with respective security rights without undue delay. The Customer shall assist the Company by all means, such as registration, publication, etc., for example, which are necessary to for effect and implement such security rights.
(**11)** Upon request of the Company, the Customer shall take out appropriate insurance for the Retained Products, provide the Company with the relevant insurance certificate and assign the claims under the insurance policy to the Company.

§ 7 Rights of use
(1) The Company grants the non-exclusive right to the Customer to use software included in the delivery. The right of use is restricted to the agreed period, for want of such an agreement the right of use is unlimited.
(2) The Customer may use the software only with the hardware mentioned in the contract documents, for want of such document with the goods delivered with the software. The use of the software with other hardware is admissible only with the explicit written approval of the Company.
(3) The Customer may create only one duplicate of the software, as far as this duplicate is used exclusively for protection purposes. Except in the cases §69 e German Copyright Act the Customer is not entitled to amend the software, to develop back, to translate or to extract parts. The Customer may not remove alpha number broad and further call signs from storage media and has to transfer them on every backup copy consistently.

§ 8 Material defects, notification of defects and guarantee
(1) The Customer is obliged to examine the goods for quantity and quality immediately after delivery and if a defect is discovered, notify it immediately to the Company; otherwise the goods shall be deemed approved. Obvious defects have to be notified to the Company within 14 days from the delivery date in text form. Hidden defects have to be notified to the Company within 14 days from discovery in text form.
(2) If the Customer discovers a defect, he is no longer entitled to dispose of the goods, this means the goods must not be divided, combined with other things, blended, processed or sold, until an agreement on the settlement of the claim has been made or a standalone evidence procedure has been carried out by an appointed and sworn expert of the Chamber of Commerce at the Customer's seat.
(3) The Customer is obliged to hand over to us the defective goods or samples thereof for examination of the complaint. In case of culpable refusal, any warranty claims are excluded.
(4) In case of justified complaints the Company is entitled to determine the type of subsequent delivery (replacement or rework), taking into account the nature of the defect and the interests of the Customer.
(5) The Customer has to inform the Company immediately about a warranty case occurring with a contracting partner.
(6) Warranty claims of the Customer expire within a period of 12 months from delivery.
(7) Warranty claims regarding the purchase of used goods pursuant to § 437 German Civil Code are excluded.

§ 9 Industrial Property Rights, Copyright, Legal Defects
(1) Except as otherwise agreed, the Company is obliged to make delivery free from industrial property rights and copyright of third parties (hereinafter „Rights") only in the country in which the place of delivery is located. To the extent that a third party asserts legitimate claims against the Customer in respect of the infringement of Rights by deliveries carried out by the Company and which are being used in accordance with the terms of the relevant contract, the Company shall be liable to the Customer only within twelve months from the date of the delivery of the goods in the following manner:
a) At its discretion and at its own expense, the Company shall either obtain a Right to use the goods in question or to modify the delivered goods in such a way that no rights are infringed or to exchange the delivered goods. If it is not possible for the Company to do this under reasonable efforts, the Customer shall be entitled to the statutory rights of rescission and reduction of payment.
b) The obligation of the Company to pay damages is governed by § 10 below.

c) The Company shall be subject to the foregoing obligations only to the extent that the Customer notifies the Company in writing without undue delay of the claims being asserted by third parties, that the Customer does not acknowledge any infringement and that all measures and settlement negotiations remain reserved for the Company. If the Customer ceases to use the delivered goods for the purpose of damage limitation or for any other important reason, he is obliged to refer the third party to the fact that such cessation of use may not be construed as an acknowledgement of an infringement of rights. Any indemnity obligations for the Company shall be limited vis-à-vis the Customer to the amount of the purchase price of the goods in question.
(2) Claims by the Customer shall be excluded to the extent that he is responsible for the infringement of Rights.
(3) Claims by the Customer are furthermore excluded to the extent that the infringement of Rights is caused by special requirements of the Customer, by use of the goods which the Company could not have foreseen or by the fact that the delivered goods are modified by the Customer or used in conjunction with products not supplied by the Company.
(4) In the event of infringement of Rights otherwise the provisions with regard to material defects apply mutatis mutandis.
(5) If other legal defects exist, the provisions in respect of material defects pursuant to § 8 shall apply mutatis mutandi.

§ 10 General limitation of liability
Claims for compensation of the Customer, for whatever legal reason, in particular from impossibilities, default, defective or wrong delivery, breach of contract, violation of obligations with regard to negotiations of contracts and tortious act are excluded for slight negligence. This exclusion of liability is not valid by an injury of life, body or health and by slightly negligent violation of essential contractual obligations. In cases of slightly negligent breaches of essential contractual obligations the liability is limited to the typical damage predictable at the time of the conclusion of the contract. Consequential damages are eligible for compensation if they are typically to be expected under normal conditions of use of the goods. The above exclusions and limitations apply to the same extent in favour of the Company's management bodies, legal representatives, employees or other agents.

§ 11 Venue and applicable law
(1) Place of fulfilment and jurisdiction for deliveries and payments and all disputes arising between the parties shall be, to the extent that the Customer is an entrepreneur, a legal entity under public law or a special fund under public law, the main seat of the Company in Schnelldorf. The Company shall have the right, however, to sue the Customer in any other venue.
(2) The relations between the parties are governed exclusively by the laws of the Federal Republic of Germany with the exclusion of the UN Convention on the International Sale of Goods and the principles of conflict of laws.

§ 12 Severability clause
Should any provision of this agreement, or any provision incorporated into this agreement in the future, be or become invalid or unenforceable, the validity or enforceability of the other provisions of this agreement shall not be affected thereby. The invalid or unenforceable provision shall be deemed to be substituted by a suitable and equitable provision which, to the extent legally permissible, comes as close as possible to the economic intent and purpose of the invalid or unenforceable provision. The same shall apply if the parties have, unintentionally, failed to address a certain matter in this agreement; in this case a suitable and equitable provision shall be deemed to have been agreed upon which reflects what the parties, in the light of the economic intent and purpose of this agreement, would have agreed upon if they had considered the matter.