

**General Terms and Conditions of engagement and delivery
of the „Comes Maschinen- und Apparatebau GmbH“ Company**

1. Basic principles

- (1) These General Terms and Conditions of engagement and delivery shall solely apply to merchants, body corporates organized under public law and separate estates subject to public law.
- (2) All deliveries, service performances and offers of the contractor are based and carried out on these General Terms and Conditions of engagement and delivery. These Terms are of essence for every delivery or performance service offered by the contractor, when entering into a contract with a client. They also apply to future deliveries, service performances and offers to the client, even if these are not separately agreed upon specifically.
- (3) General Terms and Conditions coming from the client or a third party will not apply, even if the contractor does not specially object their application. Even if the contractor includes or refers to General Terms and Conditions of the client or a third party in a letter, this will not mean that he is giving his consent to these Terms and Conditions and their application to the business.
- (4) In case of discrepancies between parts of the contract, concluded by the contractor and the client, with the General Terms and Conditions, following will be applied in this order:
 - 1) Order confirmation
 - 2) Enclosures of the order confirmation
 - 3) General Terms and Conditions and their enclosures

2. Offer

- (1) All offers remain exemptible and without engagement, unless they are particularly agreed on becoming binding or contain a particular Term of acceptance.
- (2) The extent of the contractual performance is solely regulated by the contractors order confirmation. Subsidiary agreements, amendments, changes and/or variations of the Terms are solely applicable, if explicitly agreed on in written.

- (3) Statements of the contractor referring to the items of delivery or service (for example weight, dimensions, practical value, capacity, tolerances and technical data), as well as the representations of it (for example drawings and illustrations) are only approximately applicable, unless its applicability for the purpose contractually desired requires precise conformity.

These are no guaranteed quality features, but descriptions or labeling of the delivery or service performances. Variations that are customary in the trade and those that are based on legal regulations or represent a technical improvement are acceptable, as long as the use foreseen by the contract is not affected. The same goes for exchanging component parts for different equivalent parts.

- (4) The contractor reserves his right to ownership and copyright on all his offers and estimates of cost, as well as all the sketches, the figures, the calculations, the brochures, the catalogues, the models, the tools, and other documents and means that the contractor provided to the client. The client is not entitled to make the objects or their content available to third parties, to publish them, to use or reproduce them, unless this has been specifically been agreed on with the contractor. The same goes for third parties.
- (5) If the contract is not concluded the client is obligated to return to the contractor all the documents and items previously received, and all photocopies thereof have to be destroyed, unless the client needs them for proper business transactions.
- (6) The client pledges his right to disclose the documents and plans to the contractor in order for him to submit the offer and the execution of the contract. These documents and plans will be free from copyrights and other rights.

3. Scope of delivery

- (1) The contractor's written order confirmation shall prevail in any questions referring to the range of delivery. In the case of an offer by the client with a certain period of validity and an order pursuant to the offer within that period, the offer date shall prevail if no order confirmation has been issued within that period.
- (2) Subsidiary agreements and changes to the contract can solely be obtained through a written confirmation of the contractor.

4. Prices

- (1) The prices apply for the scope of supply and performance stated in the order confirmation. Additional or special services will be calculated separately. Prices are in Euro, ex works excluding loading, packaging and sales tax.
- (2) If a period of four months passes between the conclusion of the contract and the agreed delivery date, then the contractor is entitled to raise the prices according to higher material, labor and other incidental expenses or costs that are carried by the contractor. In case that the price rises over 40% the client is entitled to withdraw from the contract.
- (3) If the contractor takes into account further change requests from the client, then the client has to bear the additional costs, which will appear on the invoice.
- (4) The allowance of a discount has to be specifically approved in writing by the contractor.

5. Agreed Terms of Payment

- (1) Unless otherwise agreed, payments shall be made by money transfer to the account stated in the order confirmation or the offer, as follows:
 - 1) 1/3 deposit after receiving the order confirmation
 - 2) 1/3 as soon as the client is notified that the main parts are ready for delivery
 - 3) The remaining amount within one further month.
- (2) If the customer is in default of payment, the contractor is entitled to charge an interest rate of 8 percent points over the base rate from the moment of the arising of the claim. The enforcement of a further damage caused by delay and higher interest rates remain untouched.
- (3) The offset of claims of the client or the retention of payments because of such claims is solely admissible, if the counterclaim is undisputed or has been determined without further legal recourse.

6. Terms of delivery and delivery period

- (1) Deliveries are made ex works.
- (2) If the client wishes to have the items delivered to another place or to different Terms, he has to reimburse all necessary costs, including the disposition costs.
- (3) The period of delivery begins with the mailing of the order confirmation but not before the provision of any documents, approvals and clearances to be furnished by the client, any pending service performances by the client and before the receipt of any agreed down payments.
- (4) The period of delivery is subject to the reservation of timely self-delivery of the contractor. The client will immediately be informed of impending delays.
- (5) The delivery deadline has been met, if the item has left the factory or the client has been informed about the items readiness for dispatch within the delivery period. If delivery items are required to undergo acceptance, the acceptance date is applicable. In the alternative, the date of notification of readiness for acceptance is applicable, if the client is not entitled to refuse acceptance.
- (6) The delivery deadline shall be suitably extended in the event of industrial action, in particular strikes and lockouts, as well as force majeure, as long as these are proven to be of significant influence on completion and delivery of the items.
- (7) The contractor is also not responsible for the circumstances above, if these arise during a default of acceptance. The contractor will immediately inform the client about the beginning and the end of important circumstances.
- (8) If the client falls into default of acceptance or if he culpably violates other cooperation obligations, the contractor is entitled to demand compensation for the arising damages including possible additional expenses. Further claims remain reserved and unaffected. If the above stated conditions apply, the risk of accidental destruction or degradation of the item or object rests with the client from the time he has fallen into default of acceptance.

- (9) If the contractor falls into default in making a delivery or providing a service or if he is unable to do so, no matter for what reason, the contractor's liability is limited to compensation in accordance with §10 of these Terms and Conditions.
- (10) If shipping of the delivery items or acceptance of the performance are delayed on the clients request, any arising costs owing to the storage of the delivery items will be charged to the clients account one month following notification of readiness for shipment or readiness for acceptance. If items are stored in the contractor's factory, the charge will be of ½ percent of the invoice for every stale month. The right to claim for additional storage costs or request proof of lower storage costs remains reserved. The same applies for the case in which the completion falls into delay because of circumstances that lie in the responsibility of the client.
- (11) The contractor is entitled to demand an extension for deadlines for delivery or service performances, or a postponement of delivery and completion deadlines by the period of time for which the client fails to meet his contractual obligations with respect to the contractor, irrespective of his other rights.
- (12) Part deliveries are permitted, if:
- 1) Partial delivery can be used by the client within the scope of contractual intended use
 - 2) Delivery of the remaining ordered items is guaranteed
 - 3) And no significant additional work and expenses or additional costs are incurred for the client, unless the contractor declares his willingness to bear the additional costs.

7. Import and export regulations, Customs

- (1) In case of export delivery the client bears the additional costs such as customs and any fees or public duties.
- (2) If the items are to be delivered to another country within the European Union and the business is exempted from turnover tax according to German Law, then the client sees himself obligated to issue a conformation of arrival to the contractor on his own cost. This conformation of arrival must contain the following information:
 - Name and address of the customer
 - The quantity of delivery items and the commercial designation

- Statement of place and month of acceptance of the item within the community area when dispatched or transported by a entrepreneur, or when dispatched by the customer; when transported by the customer, statement of place and month of the ending of transportation of the item in the community area
- The date of issue of the confirmation
- The signature of the contractor or an entitled representative for acceptance.

8. Place of performance, Shipping, Packaging, Passing of risk, Acceptance of delivery

- (1) Place of performance for all contractual obligations is Trier, unless stated otherwise. If the contractor also owes the installation, the place of performance will be the place in which the installation has to be made.
- (2) The type of dispatch and the packaging are subject to the dutiful discretion of the contractor.
- (3) The risk transfers to the client at the latest, when the delivery items are handed over to the forwarding contractor, carrier or a third party in charge of sending the items (the time at which the item is loaded is decisive). This is also the case when partial deliveries are made or when the contractor has undertaken other obligations (for example dispatch or installation). If the dispatch or the delivery falls into delay due to circumstances that lie within the responsibility of the client, the risk transfers to the client from the moment in which the items are ready for dispatch and the contractor has informed the client of this.
- (4) Any storage costs after the risk has been transferred is to be carried by the client. In case of storage by the contractor, the storage costs amount to ½ percent of the invoice amount of the items to be stored per month of elapsed time. The right to claim for additional storage costs or request proof of lower storage costs remains reserved.
- (5) The items are insured only at the express request of the client and at the latter's expense - including the disposition costs - against theft, breakage, damage in transit, by fire and water, and against any other insurable risk.
- (6) Insofar as an acceptance has to take place, the items of the contract are considered to have been accepted, when:

- The items have been delivered and, if an installation has to be made, the items have been installed
 - The contractor notifies the client of notional acceptance under article §8 (6) of these General Terms and Conditions and requests the acceptance of the delivery,
 - The items have been delivered or installed for a month of time or the client has started using the delivered items (for example the supplied piece of equipment has been transferred to the plant) and in this case 12 working days have passed since the delivery date and
 - The client has failed to accept within this period of time, for another reason than the defect notified towards the contractor, and this new defect makes the use of the item impossible or affects its use significantly.
- (7) The risk of accidental loss or deterioration of the items transfers to the client at the moment in which he falls into default of acceptance or his debtor's delay begins.

9. Defects liability, Material defect

- (1) The warranty period is 1 year and begins from the point in time of delivery or, if acceptance is required, the point of acceptance. As far as the limitation of damage claims, which are based on damages of the delivery items, the regulations of §10 (8) apply.
- (2) The items are immediately to be vetted after delivery to the client or to a third party determined by him. Obvious damages or other damages that could have been noticed after an immediate and careful inspection will be considered as accepted by the client, if the contractor does not receive a written notice of defects within 7 work days after delivery. Items with other defects are considered as accepted by the client, if the contractor does not receive notice of defects within 7 workdays after the client takes note of them. If, through usage of the items, the defect could have been noticeable for the client at an earlier stage, then this earlier stage is decisive for the notification period. On request of the contractor, the rejected items are to be delivered to him free from transportation charges. The contractor will reimburse the client the money for the most favorable price for returning the items, when the complaint is legitimate; this does not apply in so far as the costs rise because the delivered items are located somewhere other than the place of use as determined.

- (3) In case of material defects in the delivered items the contractor is initially obliged and entitled to repair then supply replacements according to his choice, which is to be made within an appropriate period. In the event of failure, i.e. repair or replacement supply is impossible or unreasonable or in case of refusal by the contractor or inappropriate delay, the client may withdraw from the contract or reduce the purchase price appropriately.
- (4) If the defect is caused by fault of the contractor, the client is entitled to claim his rights for compensation under §10 of these General Terms and Conditions.
- (5) In case of defects in items or components from other manufacturers, which the contractor cannot remedy for reasons of licensing law or for factual reasons, then, at his choice, the contractor will make his warranty claims against the manufacturer and supplier on the client's account or transfer these to the client. Warranty claims against the contractor are subject to the other requirements to be satisfied and subject to these general Terms of delivery and shall not arise until the judicial enforcement of such claims against such manufacturer and its suppliers has failed or has no prospect of success, for example by reason of insolvency. For the duration of the legal dispute the statute of limitations shall be suspended for all corresponding claims of the client against the contractor.
- (6) Warranty does not apply, if the client alters the delivered items or allows a third party to do so, without the prior consent of the contractor, and if such alteration makes the elimination of defects impossible or unreasonably difficult. In any case the client is obligated to carry the additional costs for the removal of defects.
- (7) In the particular case of deliveries of used items, the warranty will exclude all and any warranty for material defects.
- (8) The contractor does not safeguard damages resulting from the following: Unsuitable or improper use, incorrect installation respectively commissioning of the items by the client or third parties; normal wear and tear; negligent or incorrect handling; unsuitable operating materials; alternative materials; inadequate construction work; unsuitable foundation; chemical, electrochemical or electrical influences, unless the fault lies with the contractor.

10. Liability for damages in case of default

- (1) Any liability of the contractor for damages, for whatever legal reason, in particular because of impossibility, delay, damaged or wrong delivery, contract violation, violation of obligations on contract negotiations and liability in tort, and in as much as it is in matters of fault, is limited in accordance with §10 of these General Terms and Conditions.
- (2) The contractor shall not be liable in cases of simple negligence of his organs, legal representatives, employees or other contractors, as long as essential contractual duties are not being violated. Essential contractual duties are those obligations, which make the proper execution of the contract possible and upon which the contracting party relies and may rely on under normal circumstances.
- (3) If the contractor is liable for damages according to §10 (2), his liability is limited to damages he had foreseen at the time of conclusion of the contract or those he should have foreseen by applying due care. Furthermore, indirect damage and consequential damage resulting from defects in the delivered items are only subject to compensation in so far as such damage is typically to be expected when using the items as stipulated.
- (4) In case of liability for simple negligence, the contractor's obligation to pay compensation for material damages and consequently arising financial loss is limited to EUR 5.000.000,00 for each event of damage (according to the current cover sum of his product liability insurance or third party insurance), even if this is a case of infringement of obligations essential to the contract.
- (5) The above mentioned exclusions of liability and limitations of liability shall also apply to the organs, legal representatives, employees, and agents of the contractor.
- (6) Insofar as the contractor provides technical information or acts as an adviser and this information or advice is not part of the contractually agreed scope of services owed by him, this is done free of charge and with the exclusion of any liability.
- (7) The limitations to §10 do not apply to the contractor's liability on account of deliberate actions, for guaranteed characteristics, on account of injury to life, limb or health, or according to product liability law.

- (8) The limitation period for claims of damages based on defective delivery or service performance is 1 year starting the date of passing of risk. The limitation period for claims based on other contractual duties is 1 year starting the end of the year in which the claim arose and the client gained or should have gained knowledge of such circumstances and the person of the debtor, or would have learned thereof without gross negligence.

The legal statute of limitation applies to injuries to life, body or health, for damages according to the product liability law, as well as the ones caused by fraudulent behavior, damages caused with intent, by an act of gross negligence, or negligent breach of essential contractual duties according to §10 (2) of these General Terms and Conditions.

11. Title retention

- (1) The contractor reserves his right to retain ownership of the delivered items until all contractual obligations from this agreement with the client are met.
- (2) The client will store the delivery items for the contractor, at no cost.
- (3) The contractor is entitled to insure the delivery items against theft, breakage, fire damage, water damage and other damages at the expense of the client, unless the client can prove that he has insured the delivery items himself.
- (4) The client is entitled to process and sell the reserved items in normal business dealings up to the point of instigation of recovery. Pledges and transfers by way of security are not permitted.
- (5) In case that the reserved items are processed by the client, it is agreed that the processing is done in the name and on behalf of the contractor as manufacturer and the contractor directly receives the ownership or –if the processing is carried out with materials from diverse owners or the value of the processed items is higher than the entire delivery- the co-

ownership (fractional ownership) of the newly produced items in relation of the value of the reserved items, to the value of the newly produced items. If no such acquisition of ownership occurs for the contractor, the client shall transfer with conclusion of the contract, his future ownership or –in the aforementioned ratio- his co-ownership in the newly created

items to the contractor for collateral. If the delivery items are combined or inseparably mingled with any other items forming one single item/product, and one of the other items is considered the key component, the contractor hereby transfers to the client, if the key component is owned by the contractor, a co-ownership interest in the single item in the proportion defined in sentence 1 above.

- (6) If the client resells the delivered items, the ordering party hereby assigns to the contractor as collateral claims he may in future have against the buyer –when having co-ownership on the delivery, then respectively the value of the co-ownership. The same goes for any other claims that replace the delivery or arise due to the delivery, as for example insurance claims or tort claims for loss or destruction. The client is entitled to collect the receivables assigned to the contractor in trust for the contractor, under his own name; this may be revoked. This authorization for collection may solely be revoked in case of realization.
- (7) If third parties take hold of the delivery, especially by garnishment, the client has to immediately advise of the property of the contractor and also inform the contractor in order for him to assert his property rights. If the third party is not able to reimburse the contractor the judicial or out of court costs within this context, the client shall be liable for these.
- (8) Upon request, the contractor shall release the delivery and/or the commodities that take their place or any claims assigned, as far as their value exceeds by more than 50% the amount constituted by secure claims. The contractor shall decide which individual items shall be released.
- (9) The contractor is entitled to withdraw from the contract (case of recovery) and demand the delivery from the client, when the client behaves contrary to the contract, in particular in case of late payment.

12. Right of retention

- (1) The client is only authorized to practice his right of retention, if his counterclaim is based on the same contractual relationship.

13. Know-How, Inventions and Improvements

(1) The contractor shall be sole owner of all rights in those inventions that either the contractor himself or his employees achieve in execution of their contractual duties. The same applies to improvements of existing products, as long as own protection-rights can be acquired to these improvements.

(2) Should know-how or any other intellectual property right or copyright be involved in the contractors execution of contractual duties and these, at the same time, are required for the exploitation of the subject-matter of the contract, the client is granted a not exclusive, untransferable right of use, against appropriate payment, unless otherwise agreed.

(3) If employees of different parties are involved in the same inventions (joint inventions), the registered rights and the rights conferred to this invention are held jointly by all participating parties.

14. Choice of law and jurisdiction

(1) The application and interpretation of these General Terms and Conditions and the conclusion and interpretation of legal transactions with the client are solely guided by the laws of the Federal Republic of Germany, excluding the UN Convention on the International Sales of Goods (CISG) and any conflict of laws rules of German international private law.

(2) The court of jurisdiction responsible for the suit of all disputes arising from this contractual relationship is the one where the contractor resides. The contractor is also entitled to file a suit at the court of jurisdiction at the headquarters of the client.

15. Severability clause, written form

(1) If individual regulations in this contract are void or unfeasible, or become void or unfeasible after concluding the contract, the contract remains unaffected by these. As far as these General Terms and Conditions contain omissions, those legally effective provisions, which the contracting partners would have agreed upon according to the commercial aims of the contract, and the purpose of General Terms and Conditions, if they had been aware of the omissions are considered to be agreed for filling these gaps.

(2) Amendments and modifications to these agreements, including these Terms and Conditions, require the written form to become effective.

Solely executives or authorized representatives, and not the contractor's employees, are entitled to reach oral agreements, which differ from this. The written form regulations are met when transmitting the message electronically, especially per telefax or email, as long as a copy of the signed statement is also transmitted.

Please note:

The client takes notice of the fact that the seller stores and saves data of their contractual relationship under § 28 of the Federal Data Protection Act (Bundesdatenschutzgesetz) for the purpose of data processing and reserves the right to transmit the data to third parties, if necessary for the performance agreement (for example insurances).