

# Lieferbedingungen\_EN

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## TEUPEN Maschinenbau GmbH General Terms and Conditions of Delivery and Business

### A. General provisions; scope

1. All deliveries, services and quotations we provide to the Business Partner are subject to these terms and conditions (hereinafter: **"these Terms and Conditions"**). Any general terms and conditions issued by the Business Partner that differ from, contradict or supplement these Terms and Conditions shall only apply if and insofar as we expressly agree to them. This requirement for our agreement shall apply in all cases, even if we, in full awareness of the Business Partner's general terms and conditions, provide deliveries or services to the Business Partner without reservation, for example. The version of these Terms and Conditions that applies shall be the version last incorporated into a contract with the Business Partner; said version of these Terms and Conditions shall thereafter also apply to future contracts of the same type, even if we fail to reiterate this validity for each individual future contract.
  2. Any agreements regarding quality, contractually stipulated use, the assumption of procurement risks, warranties or other assurances made before or on conclusion of the contract shall only be effective if made by persons authorised by us to do so. If they are in any doubt as to the authority of the person making such agreements or assurances, the Business Partner shall be obligated to check with our management – or with a member of our staff known by the Business Partner to be authorised due to their involvement in the business relationship thus far – as to whether the person making the agreements or assurances in question is actually authorised to do so. Should the Business Partner fail to comply with this obligation, they shall thereby forego their right to claim at a later date that said agreements or assurances were made under apparent authority.
  3. All legal statements and reports (definition of deadlines, reminders, notice of withdrawal) made by the Business Partner must be issues in writing. This shall not affect any formal requirements as defined by law. The same shall apply to our right to request proof of credentials from the person(s) issuing such declarations.
- ### B. Quotation, scope of delivery or services, subcontracting, self-supply, delivery period, transfer of risk, returns and acceptance
1. Our performance shall be subject to the punctual and correct delivery of the appropriate goods to us by our own suppliers.
  2. The Business Partner shall be legally bound to their quotation (order) for 2 weeks from the date their order is received by us.
  3. Our order confirmation shall be exclusively binding with regard to the scope of delivery or services. Our quotations can only be accepted without alterations; any alterations made by the Business Partner shall constitute a new order as per Paragraph B.2. Upon request from us, the Business Partner shall be required to provide confirmation of the order confirmation issued by us.
  4. We reserve the right to modify our production processes for technical reasons and to deviate from the dimensions, weights, colours, patterns, etc. ordered, providing said changes are reasonable for the Business Partner; this shall apply particularly if the modifications and/or deviations in question serve to maintain or enhance the value of the product in question. This shall also apply to subsequent repeat deliveries.
  5. We reserve the right to subcontract.
  6. Partial deliveries are admissible and can be invoiced separately providing the interests of the Business Partner are respected, particularly if the scope of delivery is not amended and it is reasonable to expect the Business Partner to accept partial deliveries, taking into account the nature of the product/service provided and its typical usage.
  7. The delivery period shall begin with receipt by us of the legally binding and confirmed order confirmation as issued by the Business Partner, but not before full clarification of all the details of the execution. The Business Partner shall be obligated to provide us with all the information, documents, materials, samples and other items required in order for us to render provide the agreed product/service. If the Business Partner fails to comply with this obligation, our delivery period shall be extended by the length of time for which said non-compliance obstructs us from providing the agreed product or service.
  8. The delivery period shall be extended accordingly in case of measures taken in the context of labour disputes and other impediments beyond our control that could not have been foreseen at the time the contract was concluded (such as shortages of materials, power, labour or transport space, production downtimes, traffic problems, official orders, etc.), providing said impediments can be proven to have a considerable effect on the completion or delivery of the product/service provided. This also applies if said circumstances affect subcontractors and suppliers, providing it is neither possible nor reasonable for us to procure the services or products provided by said subcontractors or suppliers from other sources without incurring additional costs. We accept no liability for the aforementioned circumstances if they arise during an existing default. The start and end of such impediments shall be communicated to the Business Partner at the earliest possible opportunity.
  9. Delays in delivery for which we are not responsible do not constitute grounds for withdrawal on the part of the Business Partner. In case of default in delivery and if the setting of deadlines is not dispensable according to law, the Business Partner shall only be entitled to withdraw from the contract if an appropriate extension to the deadline as set out in writing by the Business Partner has elapsed unsuccessfully. The same shall apply in case of partial default or partial impossibility. At our request and within an appropriate period, the Business Partner shall be required to declare in writing whether they will withdraw from the contract due to default in delivery or whether they will insist on delivery being made. Should the Business Partner fail to provide said declaration within the set period, they shall not be able to withdraw from the contract until a new appropriate period has been set.
  10. If the goods or the product/service provided are not collected by the Business Partner by the agreed deadline, if dispatch is postponed on the request of the Business Partner, or if the Business Partner fails to collect the goods or the product/service provided after both notification of availability and a reminder of same have been issued, the costs incurred for storage and financing starting from the expiry of the agreed deadline shall be charged to the Business Partner. Unless the Business Partner is able to prove that the actual costs incurred are lower, these costs shall be charged at a rate of at least 0.5% of the respective net invoice amount for each commenced month of the delayed collection period, and at a total maximum of 5%. We expressly reserve the right to assert higher claims for damages.
  11. We shall also be entitled to otherwise dispose of the product/service provided and subsequently supply the Business Partner with another of the product/service specified in the contract following the setting and expiry of a reasonable deadline. In case of agreements for additional or follow-up orders which cause a delay in the delivery of the product/service provided, the aforementioned conditions shall apply accordingly.
  12. The risk (risk of transportation and remuneration) shall be transferred to the Business Partner when the product/service provided is handed over to the Business Partner, forwarder, freight carrier or any other person or establishment designated to perform delivery - including the use of said person or establishment's own vehicles and for FOB and CIF transactions - even in case of free domicile delivery. Dispatch, the selection of the means of transport, the transportation route and the appropriate packaging shall be effected by us with the appropriate care. Furthermore, Section H of these Terms and Conditions shall also apply. We reserve the right to take out transport insurance, but have no obligation to do so. The Business Partner shall cover the cost of this.
  13. Delivered objects must be accepted by the Business Partner even if they have minor defects. The rights of the Business Partner as per Section G of these Terms and Conditions remain unaffected.
  14. Returns made due to any late deliveries, claims or for other reasons can only be accepted if made after prior consultation with us. Unauthorised returns will not be accepted.

15. If dispatch is delayed due to circumstances caused by the Business Partner, the risk shall be transferred to the Business Partner on the date of the notification of availability for dispatch; however, we are obliged, where possible and at the request and expense of the Business Partner, to take out insurance cover that meets the specifications provided in said request. We reserve the right, in accordance with Paragraph 11 above, to store the product/service provided at our own discretion and at the Business Partner's expense, and to demand immediate payment of the price or, in case of delivery against credit, to charge the delivery period to the term of the credit.

#### C. Prices and terms of payment; increases in costs

1. In the absence of other specific agreements, the quoted prices apply ex works/warehouse and do not include postage and packaging. The quoted prices do not include value added tax at the respective legal rate. Any agreed discounts, rebates or other reductions shall only apply if all contracts between the Business Partner and ourselves that are pending or partially unfulfilled at the time of contract completion are completed properly and in full.
2. All payments due to us must be paid non-cash by means of bank transfer into the account specified by us. In particular, we shall not accept payment in cash unless specially agreed otherwise.
3. The retention of payments and the offsetting of same against counterclaims made by the Business Partner is not permitted unless said counterclaims are undisputed or asserted by law.
4. In cases of default we have the right to demand the interest at the legal rate. We reserve the right to assert claims for further damages in case of default.
5. If we become aware after completion of the contract that our payment claims are at risk due to the Business Partner's lack of solvency, we shall have the right to insist on payment in advance or collateral securities for all pending deliveries and services. If the Business Partner does not meet our requirement for advance payments or securities, we shall have the right to withdraw from the contract after the expiration of 14 days; this shall not affect any claims for damages made on our part.
6. If one or more of the following factors, such as energy costs and/or costs for raw or primary materials and/or consumables, increases during the period between completion of the contract and the day of delivery, we shall have the right to adjust the prices by the amount by which the costs of procurement or manufacture of the product/service provided has increased. However, cost reductions which arise within the same period for the factors mentioned in Sentence 1 of this Paragraph will be deducted. In case of a price increase as per Sentence 1 of this Paragraph, we shall demonstrate the cost increases and reductions by type and amount. In the event that the price increase exceeds 5% of the originally agreed price, the Business Partner shall have the right to withdraw from the contract.

#### D. Intellectual property

1. We reserve all existing intellectual property rights, copyrights and other protective rights currently held by us to any purchase orders or orders submitted to us, as well as to any diagrams, plans, drawings, calculations, instructions, descriptions or other documents (hereinafter: "**Documentation**"). Together with our own knowledge and expertise, the Documentation constitutes our intellectual property (hereinafter: "**Intellectual Property**"). Unless otherwise stated in any other provision or regulation, the Business Partner shall not be awarded any rights of use or licence to our Intellectual Property. All Documentation that is handed over may only be used for the purpose of fulfilment of contract, and must be returned once the contract in question is completed.
2. Furthermore, the Business Partner hereby agrees that they shall not attack, question or imitate our Intellectual Property in any way. This provision also applies accordingly to trademarks and other marks. Furthermore, the Business Partner hereby agrees not to use any trademarks or other marks in situations where there is a risk that said marks may be confused with trademarks or other marks belonging to us. Should the Business Partner wish to refer to their existing business relationship with us in information or marketing materials, this shall only be permitted with our express written consent.

#### E. Retention of title

1. We reserve the right of ownership to the product/service provided (goods subject to reservation) until full payment has been received. In addition to this, we shall retain ownership of the delivered goods until all claims arising from the business relationship which are due to us from the Business Partner for any legal reason, either at the time of concluding the contract or in the future, have been fulfilled. The placement of individual receivables in an open invoice and the account balancing and recognition of the same do not affect the retention of title. The Business Partner is obligated to handle the reserved goods with care; in particular, they are obliged to insure these goods at their own expense against fire, water and theft, at the replacement value of the goods. The Business Partner is responsible for having all required maintenance and inspection work performed regularly at their own expense. The Business Partner must immediately indicate any damage or destruction of the reserved goods.
2. As the manufacturer, the processing of reserved goods shall be performed for us without obligation in accordance with Section 950 of the German Civil Code (BGB). The processed goods shall be deemed reserved goods as per Paragraph E.1 of these Terms and Conditions. If the Business Partner processes, combines or mixes the reserved goods with other goods which do not belong to us, we shall hold joint ownership of the new item at the same ratio of the invoice value of the reserved goods proportional to the invoice values of the other goods utilised for this purpose. Should our rights of ownership expire as a result of a combination with other items, the Business Partner shall immediately surrender their existing property rights for the new item in line with the amount of the invoice value of the reserved goods, and shall store them for us free of charge. Our joint ownership shall be deemed reserved goods as per Paragraph E.1 of these Terms and Conditions.
3. The Business Partner shall only be permitted to sell, rent out or lease out the goods in normal domestic business transactions, under normal business conditions and as long as the Business Partner is not in default, and only provided that the receivables from the selling on of the goods are surrendered to us as per Paragraphs E.4 to E.6 of these Terms and Conditions. The Business Partner does not have the right of disposal to the reserved goods. The Business Partner must also refrain from any disposal - in particular, transfer of ownership, pledging and transfer of title - subject to the previous paragraph regarding the products/services provided or newly created items, as long as we hold sole or joint ownership. The Business Partner is responsible for safe and proper storage and insurance against theft, fire and other material damage. We have the right to request proof of adherence to these obligations from the Business Partner at any time.
4. Receivables from the resale, rental or leasing of the reserved goods shall be ceded to us immediately with the conclusion of this contract. They shall be used as security for our receivables to the same amount, as reserved goods as per Paragraph E.1 of these Terms and Conditions. If the reserved goods are sold, rented or leased out together with other goods not purchased from us, the receivables from the sale, rental or lease shall be ceded to us at the same ratio of the invoice amount for the reserved goods proportional to the invoice amounts for the other utilised goods. If goods for which we hold joint ownership as per Paragraph E.2 are sold, the corresponding share shall be ceded to us in line with our share of joint ownership. If the goods are used by the Business Partner to fulfil a contract for work and services, the receivables from the contract for work and services shall be ceded to us in advance to the same amount. We shall accept the above cessions. If the Business Partner sells the receivables within the scope of factoring, they shall cede the receivables replacing them against the factor to us. We shall accept this cession.
5. The Business Partner has the right to collect receivables from further sale, rental or lease. This right shall expire in the event of our withdrawal. We shall only make use of our right to revoke if we become aware of circumstances which involve a substantial deterioration in the solvency of the Business Partner which in turn puts at risk our payment claims, in particular in case of default of payment, failure to honour a bill of exchange or cheque or application for the opening of insolvency proceedings. On request from us, the Business Partner must inform their sale, rental or lease customers (hereinafter referred to jointly as third-party debtors) immediately of the cession to us and provide us with the documents required for the collection.

6. We must be contacted immediately if the contractual provisions between the third-party debtor and the Business Partner have an effective restriction on the right to cession, or if the agreement of the third party is required for the cession. In such cases, we shall be irrevocably authorised to collect the due receivables in the name and for the account of the Business Partner. The Business Partner shall hereby also issue the third-party debtor with an irrevocable payment demand in our favour. The Business Partner must inform us immediately of any pledging or other adverse effects caused by third parties. The Business Partner shall bear all the costs incurred in the removal of access and the return transport of the reserved goods unless the reserved goods are replaced by third parties.
7. If the implementable value of the securities generated for us exceeds our receivables by a total of more than 10%, we shall, upon request from the Business Partner or a third party adversely affected by our excessive insurance, be obliged to release the securities of our choice equivalent to the difference between the implementable value of the securities and our insurance.
8. In cases of breaches of duty on the part of the Business Partner, in particular default in payment, we shall be entitled to withdraw after the setting and expiry of a reasonable deadline for the Business Partner to complete payment; this does not affect the statutory provisions on the dispensability of the setting of a deadline. The Business Partner shall be obliged to surrender and to cede their rights to surrender. We shall have the right to access the Business Partner's premises for the purpose of redemption of the reserved goods. The same shall apply if other circumstances arise which indicate a significant deterioration in the solvency of the Business Partner and put our payment claims at risk. A credit note for the former invoice amount shall be issued for the recovered goods, less a lump-sum deduction of 10% per commenced month between the delivery and recovery. We have the right to provide proof of higher damages; the Business Partner has the right to provide proof of lower damages.
9. If the reserved goods are accessed by third parties – in particular by bailiffs – the Business Partner shall inform said third parties that the reserved goods are our property and notify us immediately so that we can enforce our property rights.

#### **F. Confidentiality**

1. The Business Partner hereby agrees to treat all confidential information belonging to us of which they become aware during the course of the preparation, performance and processing of this contract as confidential and to maintain secrecy regarding said information, even after this contract has expired or been completed. The term "confidential information" refers to information that is not, either generally or in the exact order and structure presented, general knowledge or easily accessible to such persons as usually handle this type of information, that is thus of commercial value and subject by us to such secrecy measures as can be deemed reasonable given the circumstances, and with regard to which there exists a legitimate interest in maintaining secrecy (Section 2(1), German Trade Secrecy Act (GeschGehG)).
2. The Business Partner shall restrict access to the confidential information to those persons who need to be party to the confidential information in order to perform their duties in accordance with the contract. It is prohibited to pass the confidential information on to any other persons, be they individuals or legal entities.
3. The duty to maintain confidentiality shall not apply to the following types of information:
  - a) Information for which we have provided advance written consent to disclosure.
  - b) Information that is already known to the Business Partner at the time we provide it to them, or that they have already received from a third party by legal means prior to this point.
  - c) Information that the Business Partner is required by law to provide to a government authority on account of an official decree or court decree. If such a situation occurs, the Business Partner shall notify us accordingly, providing such action is legally permitted.

#### **G. Material defects and defects of title**

1. All assessments shall be made based on the current status of technological developments in Germany.
2. Whether expressly agreed or not, documents or information relating to the product/service provided and to the application (e.g. drawings, illustrations, dimensions, weights, usage figures and other performance data) are intended for description or identification purposes only and do not constitute a warranty, guaranteed properties, contractual uses etc. We reserve the right to deviate from industrial norms as long as it is reasonable for the Business Partner, in particular in the interest of maintaining or increasing value. Neither our drivers nor external drivers are authorised to accept notifications of claims for defects. In all circumstances, notifications of claims for defects cannot be made after processing, provided that it was possible to detect the defect based on the condition the goods were in at the time of delivery.
3. The Business Partner must check the goods immediately upon receipt whilst they are still in the condition in which they are delivered, or inspect them immediately on collection, and communicate any notifications of claims for defects immediately and in writing. If the Business Partner fails to do this, they shall thereby forego their right to assert claims for defects. In case of concealed defects that could not have been discovered upon delivery, the aforementioned period shall begin upon discovery of the defect. The defective objects must be kept in the condition in which they are at the time of the discovery of the fault so that they can be inspected by us. Overweight and underweight deliveries within the usual commercial tolerances do not constitute grounds for claims or price reductions.
4. Any claims or rights that may be asserted by the Business Partner in relation to material defects found in newly manufactured items or services shall expire after 12 months, subject to Sentence 2 of this Paragraph. This does not apply if the law as per Section 438, Paragraph 1(2) (buildings and building materials), Section 445b (right of recourse) and Section 634a, Paragraph 1(2) (defects of a building) of the German Civil Code (BGB) stipulates longer periods. In the case of deliveries of used goods – subject to other agreements – all rights relating to material defects are excluded. The shortened expiry and exclusion of liability shall not apply in cases of death, physical injury or health damage due to wilful intent or negligence, in case of breaches of duty due to wilful intent or negligence on our part, in case of malicious concealment of a defect, in case of a valid guarantee of quality, or in case of claims in accordance with the German Product Liability Act (Produkthaftungsgesetz). If the newly manufactured item has performed 2000 operating hours or more within less than 12 months as per Sentence 1 of this Paragraph, rights to make claims for material defects shall expire after 2000 operating hours.
5. In case of material defects, we shall initially be granted the opportunity to perform subsequent fulfilment within a reasonable period, and shall have the choice of repairing the defects or supplying a non-defective replacement item. In the latter case, the Business Partner shall be obliged to return the defective item upon our request as per the legal regulations. If subsequent fulfilment fails, we have the right to refuse subsequent fulfilment as per Section 439, Paragraph 4 of the German Civil Code (BGB). If the subsequent fulfilment is unacceptable for the Business Partner or there is an instance of Section 323, Paragraph 2 of the German Civil Code, the Business Partner may - without prejudice to any claim for damages as per Paragraph 6 - withdraw from the contract or reduce the purchase price. Following notification, the Business Partner must grant us the required time and opportunity to carry out all the required repairs or replacement delivery at our reasonable discretion. Should the Business Partner fail to do this, we shall notify them that their actions are preventing us from carrying out subsequent fulfilment; following this notification, we shall be exempt our duty to carry out subsequent fulfilment until such time as we are no longer obstructed from doing so. The risk of further deterioration of the product/service provided during the period in which we are unable to carry out subsequent fulfilment shall be borne by the Business Partner; there shall be no right of withdrawal during this period.
6. The Business Partner shall have no right to assert claims for defect in cases of insignificant deviation from the agreed properties, in cases of insignificant adverse effects on usage, in cases of natural wear or damage which arises as a result of incorrect or negligent handling or storage, excessive strain, unsuitable equipment or special external influences which are not provided for as per the contract.

7. The rights of recourse of the Business Partner against us as per Section 445a (recourse of the entrepreneur) of the German Civil Code (BGB) shall be constituted only if the Business Partner has not made any agreements with their customer which go beyond the legal rights to make claims for defects. For the scope of the rights to recourse of the Business Partner against us as per Section 445b, Paragraph 2 of the German Civil Code, the following Paragraph G.8 applies accordingly.
8. The Business Partner's rights to assert claims relating to the required outlay for the purposes of subsequent fulfilment shall cover the spare and replacement parts required to remedy the defect, the freight costs for normal standard freight routes and systems, and any customs costs and other import taxes at the amount documented by the Business Partner. Further costs, specifically those relating to labour and travel costs where such are not included in the freight costs, shall not be covered unless another provision to the contrary has been agreed.
9. Claims relating to partial deliveries shall not constitute a reason to refuse the remaining subsequent deliveries under the same contract unless the Business Partner has no interest in the latter as a result of the defects affecting the partial deliveries.
10. In the event of defects in title the provisions in Paragraphs G.1 to G.9 of these Terms and Conditions shall apply accordingly.

**H. Claims asserted by the Business Partner in case of delays in delivery, impossibility and other breaches of duty; limitation of liability**

1. Any claims for damages arising from the delay in delivery, due to the impossibility of delivery, due to defects in supply, or for other legal reasons, specifically due to breaches of duty arising from the contractual relationship or from tort, are excluded if not addressed in Paragraphs H.2 to H.8 of these Terms and Conditions. This applies to both damage claims and the reimbursement of the Business Partner's expenses.
2. The aforementioned limitation of liability does not apply a) in cases of wilful intent or gross negligence on our part or that of our vicarious agents b) to damages resulting from loss of life, physical injuries or health damage, irrespective of the degree of damage incurred or c) to claims asserted in accordance with the German Product Liability Act (Produkthaftungsgesetz).
3. In case of a breach of one or more essential contractual obligations on our part, claims for damages for a breach of essential contractual obligations due to ordinary negligence shall be limited to such damages as are foreseeable, typical in conjunction with this type of contract, and the direct result of the breach. Essential contractual obligations are obligations which need to be fulfilled in order to enable the proper execution of the contract, the fulfilment of which the Business Partner can regularly rely upon. The above provisions do not constitute a change in the legal burden of proof to the detriment of the Business Partner.
4. The limitations of liability stipulated above shall also apply to our corporate bodies and vicarious agents.
5. If the Business Partner is entitled to damages as a result of defects as per Paragraphs H.1 to H.4 of these Terms and Conditions above, this entitlement shall expire when the applicable limitation periods for claims for material defects expire as per Paragraph G.4 of these Terms and Conditions above. In case of claims for damages in accordance with the German Product Liability Act (Produkthaftungsgesetz), the legal expiry regulations shall apply.
6. The Business Partner cannot demand damages in place of the products/services provided if the breach of duty on our part is insignificant.

**I. Set-up and commissioning**

The set-up and commissioning of the product/service provided are the responsibility of the Business Partner or the final user, and must be performed in accordance with our regulations, the legal regulations and the latest technological developments. However, we have the right to insist on performing set-up and commissioning ourselves upon request. In such cases, we shall charge our daily rates for technicians, hand tools and equipment, including travel and transport expenses; the Business Partner or final user shall be obligated to make all the necessary preparations at the installation location.

**J. Export and exemptions**

1. If the product/service provided is exported by the Business Partner or the final user, said person or entity shall be liable for adhering to the regulations of the destination country and any export bans which go beyond the German regulations.
2. Exporting to the United States of America or Canada is not permitted without our express consent.
3. In the event of a further sale of the product/service provided, the Business Partner hereby agrees to ensure that the recipient also make the same commitment accordingly.

**K. Trademarks and advertising**

1. The Business Partner is only permitted to use or sell the product/service provided with the trademarks and other markings indicating the manufacturer intact as delivered by us.
2. The Business Partner is responsible for the accuracy and sincerity of their own advertising.

**L. Cession**

The Business Partner does not have the right to cede their receivables from their contractual relationship with us to third parties. The above provision does not apply to cash receivables.

**M. Applicable law, place of fulfilment and place of jurisdiction**

1. All legal relationships that arise in conjunction with the agreement, execution and termination of this contract shall be subject to the substantive law of the Federal Republic of Germany, to the exclusion of the CISG (United Nations Convention on Contracts for the International Sale of Goods).
2. The place of fulfilment for all deliveries, products and services provided by us either based on or in conjunction with this contract shall be 48599 Gronau, Germany.
3. The sole place of jurisdiction for all disputes between the Parties either resulting from or in conjunction with this contract shall be 48599 Gronau, Germany. However, we reserve the right to use any other legally viable place of jurisdiction based on our choice of Business Partner.

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