

Terms and Conditions of Sale

Werner Koch Maschinentechnik GmbH

Fasti Koch GmbH

§ 1 Scope

(1) These Terms and Conditions apply solely to entrepreneurs as defined in Section 310 (1) BGB (Civil Code). Any terms and conditions of the Client conflicting with or differing from these Terms and Conditions of Sale will be recognised only if we expressly agree with their application in writing.

(2) These Terms and Conditions of Sale shall also apply to all future transactions with the Client where these are legal transactions of a similar type.

§ 2 Offer and Conclusion of the Contract

Should a purchase order be considered an offer under Section 145 BGB, we can accept it within two weeks.

§ 3 Documentation Provided

We reserve the title and copyright to all documentation provided to the Client in connection with the submission of a purchase order such as calculations, drawings etc. Such documentation must not be made accessible to third parties unless we give our express written consent thereto to the Client. If we do not accept the Client's offer within the time limit set out in Section 2, such documentation must be returned to us immediately.

§ 4 Prices and Payment

(1) Unless agreed otherwise in writing, our prices are prices for delivery ex works exclusive of packaging charges and value added tax at the applicable rate. Packaging charges shall be charged separately.

(2) The purchase price must be always paid to the accounts specified in the invoice. A discount deduction is permitted only based on a separate written agreement.

(3) Unless agreed otherwise, the purchase price must be paid within 30 days after the delivery. Interest on late payment shall be charged at 8% plus the relevant base interest rate p.a. We reserve the right to claim higher compensation for damage due to late payment.

(4) We reserve the right to make reasonable price adjustments due to changes in wage, material and distribution costs for deliveries taking place 3 months after the conclusion of the Contract or later.

§ 5 Right of Retention and Set-Off

The Client has the right of retention and the right of set-off only where the mutual claims are undisputed or legally binding.

§ 6 Delivery Period

(1) The start of the above delivery period is conditional upon the clarification of all technical issues as well as the timely and proper compliance with the Client's obligations. The aforementioned delivery periods are not binding. We reserve the right to lodge an objection due to a contract default.

(2) In the event that the Client is in default in the acceptance or violates any other obligations of cooperation due to its own fault, we are entitled to claim compensation for incurred damage including all extra costs. Any other claims are reserved. If the above situation arises, the risk of accidental cessation of the existence of or accidental deterioration of the purchased items shall pass to the Client at the moment when the Client is first in default in acceptance or payment.

§ 7 Transfer of Risk during Transport

If the goods are sent to the Client at its request, the risk of accidental loss or accidental deterioration of the goods shall pass to the Client no later than upon the departure of the goods from the plant. This applies regardless of whether the goods are sent from the place of performance and who bears the shipping cost.

§ 8 Retention of Title

(1) Extended retention of title shall apply. We reserve title to the delivered items until the full payment of all claims arising from the contract for delivery. This also applies to all future deliveries even if we do not expressly refer to them. If the Client breaches the Contract by its conduct, we are entitled to take the purchased items back.

(2) Until the title to the purchased items passes to the Client, the Client shall treat the purchased items with due diligence. In particular, the Client shall arrange and maintain a sufficient insurance policy at its expense covering theft, fire and water damage up to the acquisition cost. Where maintenance and inspection work is necessary, the Client shall perform such work in a timely manner at its own expense. Until the title passes to the Client, the Client must immediately notify us in writing if the delivered item is subject to pledging or other interference by third parties. Where a third party is unable to reimburse the claimant's court and out-of-court expenses under Section 771 ZPO (German Code of Civil Procedure), the Client shall be liable for any such loss that we incur.

(3) The Client shall be entitled to resell goods subject to retention of title in a due business transaction. However, the Client's claims arising from such resale of the goods subject to retention of title are hereby assigned to us in the amount of the agreed upon final amount shown in the invoice (inclusive of VAT). Such assignment shall be valid regardless of whether the purchased items were resold without or after further processing. The Client shall continue to be entitled to collect the claim upon the assignment. Our right to collect the claim separately shall remain hereby unaffected. Nevertheless, we agree not to collect the claim as long as the Client continues to meet its payment obligations using its receipts, is not in default in payment and there is no pending insolvency petition or stoppage of payments.

(4) The Client's acquisition of title to the goods subject to retention of title under Section 950 BGB in the event that such goods subject to retention of title have been reworked and processed into a new item is hereby excluded. The Client carries out such reworking and processing for us without any obligations arising to us. Reworked and processed goods shall be considered goods subject to retention of title as defined in these Terms and Conditions. In the event that the goods are inseparably combined or mixed with goods that are not ours (Sections 947, 948 BGB), we will become co-owners of the new item or the total quantity at the ratio of the value of our goods subject to retention of title and the value of the other combined or mixed goods at the moment of their combining or mixing. If the Client acquires the exclusive title to the new item, the Parties agree that the Client will transfer co-ownership to the new item to us at the proportion of the value of the processed or combined, mixed goods subject to retention of title to the total value or the total quantity of the new item. Such a new item shall be considered goods subject to retention of title as defined in these Terms and Conditions. The Client shall keep such goods for us while exercising due care and agrees to provide us with the details necessary to exercise our rights and allow us to review its documentation.

(5) We are entitled to revoke the Client's right to sell the goods subject to retention of title with immediate effect and collect the claims assigned to us if the Client is in default in payment to us or is experiencing financial difficulties due to a significant deterioration of its financial circumstances. If an insolvency petition is filed against the Client, payments are stopped, an affidavit under Section 807 ZPO is submitted or the ownership of the Client's company changes in connection with financial difficulties, the Client's right to sell goods subject to retention of title and collect claims assigned to us shall cease to exist automatically. If we revoked the Client's right to sell goods subject to retention of title or if it ceased to exist automatically, the Client shall release goods subject to retention of title to us immediately and ensure direct ownership for us or a person authorised by us.

(6) We agree to release any security belonging to us at the Client's request if its value exceeds the secured claims by more than 20%.

§ 9 Warranty and Claims

(1) The Client's warranty claims are subject to the Client's due compliance with its obligation to inspect the goods and object to any defects under Section 377 HGB (German Commercial Code). If claims arise despite our maximum attention, under Section 377 HGB, apparent defects must be claimed immediately, hidden defects must be claimed immediately upon their detection, otherwise the goods shall be deemed to have been approved.

(2) Defects claims shall expire 18 months after the delivery of the goods to the Client. Our consent must be obtained before returning any goods.

(3) If the delivered goods show a defect that existed at the time of the transfer of risk despite all due care, we will repair or replace the goods at our own discretion provided that we were notified of the defect in a timely manner. However, we must be given an opportunity to provide additional performance within a reasonable time limit.

(4) If such replacement performance fails, the Client shall be entitled – without any prejudice to claims for damages – to withdraw from the contract or require a price reduction. The Client shall not be entitled to reimbursement of unnecessary expenditures.

(5) Defects claims shall not arise in connection with negligible deviations from the agreed upon properties, negligible deterioration of usability, natural wear and tear, as well as in the event of damage resulting from the transfer of risk due to improper or negligent handling, excessive stress, inappropriate operating resources, inappropriate structural conditions or due to external influences that were not envisaged in the contract. In addition, defects claims shall not arise if the Client or a third party make improper repairs or adjustments.

(6) The Client's claims resulting from expenditures required for the purposes of additional performance, including but not limited to transport, travel, labour and material expenses, are hereby excluded if such expenses increase due to the fact that the goods delivered by us were later relocated outside the Client's branch except where such new location corresponds to the intended use of the goods.

(7) The Client may make claims of recourse towards us only if the Client did not make any agreements with its customer exceeding the legally binding defects claims. The scope of such Client's claim of recourse towards the supplier shall further apply according to paragraph 6.

(8) Defects claims larger or other than those set out in Section 9 made by the Client towards us and parties authorised by us are hereby excluded.

(9) In case of a fraudulent concealment of a defect or the assumption of the guarantee for the properties of the goods at the moment of transfer of risk as defined in Section 444 BGB, the Client's rights shall be governed solely by law.

§ 10 Acceptance

(1) If an acceptance has been agreed, it must be carried out immediately upon the notice of readiness for acceptance. If the acceptance does not take place in a timely manner or is incomplete through no fault of ours, the goods shall be deemed to have been accepted three working days after the notice of readiness for acceptance. The acceptance shall be also deemed to have been effected as soon as the delivered item is commissioned without our consent.

(2) The Client may not refuse to accept the goods due minor defects without any prejudice to its rights under Section 9.

§ 11 Devices in Trial Operation

Devices that were delivered for trial operation shall be returned by the Client in a clean and tidy condition. If the devices are contaminated or damaged, we will clean or repair them ourselves. The cost incurred shall be charged to the Client. If the agreed trial period is exceeded, we can, at our discretion, bill you for the device or charge a rental fee for the exceeded trial period.

§ 12 Miscellaneous Provisions

(1) This Contract and all legal relations between the Parties shall be governed by the laws of the Federal Republic of Germany with the exclusion of the UN Convention on the International Sale of Goods (Vienna Convention / CISG).

(2) The place of performance and the exclusive jurisdiction of court for all disputes arising from this Contract is Pforzheim, Germany.

(3) Written form is required in order for any changes and amendments hereto to be effective. This also applies to any changes to this written-form clause. No ancillary oral agreements have been concluded.

(4) If the individual provisions hereof are ineffective or incomplete, the remaining provisions shall remain unaffected.