

# General Terms and Conditions (GTCs)

ZIERER Karussell- und Spezialmaschinenbau GmbH & Co. KG  
Josef-Wallner-Straße 5, 94469 Deggendorf, Germany



## Article 1 Scope and exclusivity, interpretation

- (1) These General Terms and Conditions (hereinafter known as GTCs) shall be an integral part of our contractual declaration (contract offer or acceptance) for the conclusion of:
- Purchase contracts (Kaufverträge) where we are the vendor,
  - Contracts for manufacture and supply of goods (Werklieferungsverträge) and contracts for works (Werkverträge), where we manufacture and/or provide the agreed goods or works.
- This shall also apply if additional elements of other contract types are to be agreed, but the contract as a whole is classified as one of the types a) or b) above. In a mixed type contract, these GTCs shall apply to those parts of the contract which are assessed under the contract law for purchase or manufacture and supply or for works and services.
- (2) If our contract partner (client or buyer, hereinafter known as the "Customer") is a consumer (Verbraucher) within the meaning of Article 13 of the German Civil Code (BGB), only Article 1 of these GTCs and those further provisions which are expressly (also) aimed at consumers shall apply.
- (3) Any general terms and conditions as defined in Article 305 (1) sentence 1 of the German Civil Code (BGB) which the Customer sets out in its contractual declarations or to which the Customer refers in any other way shall not become part of the contract. We neither acknowledge such terms and conditions nor do we agree to their applicability. This shall apply even if our reaction to a contractual declaration of the Customer may be deemed an implied acceptance or if we refer to contractual declarations of the Customer without expressly rejecting the terms and conditions of the Customer. Our GTCs shall apply exclusively. However, individual contract agreements between the Customer and us shall not be affected by these GTCs and shall always take precedence.
- (4) Insofar as there are no provisions in individual contractual agreements and these GTCs, the statutory provisions shall be deemed to have been agreed. Insofar as the Customer has provided general terms and conditions which have been effectively incorporated into the contract despite the provision in paragraph 3 above and there is no provision in these GTCs for a circumstance which is governed by the terms and conditions provided by the Customer, the statutory provisions alone shall again be exclusively applicable. These GTCs shall not constitute a waiver of the rights granted to us by law.
- (5) In these GTCs, German words in brackets, shall define the intended meaning in German legal terminology. Wherever the verb "shall" is used it is meant to define a contractual obligation.

## Article 2 Offers and conclusion of contract

Paragraphs (1) to (3) shall apply both to consumers and enterprises.

- (1) Our letters and e-mails to the Customer designated as offers or quotations shall be non-binding invitations to enter into contract negotiations unless they are expressly designated as binding or contain a binding period. If an offer designated as binding does not contain a binding period, for e-mails and faxes a binding period of 7 calendar days from their dispatch shall apply, and for letters sent by e-mail a binding period of 10 calendar days from Customer's receipt of the offer shall apply.
- (2) The intended contract shall be set down in writing or at least in text form unless otherwise agreed individually. Any preparations on our part or the commencement of activities to perform the contract shall not be regarded as implied acceptance of the contract, even if we have not expressly reserved our right to accept it.
- (3) Information and details in text form outside the contract documents, for example in our catalogues, advertisements or price lists, as well as any of the properties of exhibited or submitted display items, samples and specimens shall not become part of the contract or form the basis of an agreed quality standard unless specific reference is made to them in the contract documents.

## Article 3 Prices

- (1) Unless otherwise agreed, the applicable value-added tax shall be added to the prices and paid by the Customer. Further costs, for example for transport and/or transport insurance as well as costs incurred by customs duties and taxes, shall not be included in the price unless this has been expressly agreed, for example by the use of the appropriate INCOTERMS.
- (2) We shall be entitled to increase prices appropriately at our reasonable discretion according to Article 315 of the German Civil Code (BGB) if the goods or works agreed in the contract shall be delivered or performed after a period of at least four months upon the conclusion of the contract (1st alternative) or if the goods or works can only be supplied or performed with a delay of more than four months due to circumstances which could not be foreseen when the contract was concluded and which is not attributable to our responsibility (2nd alternative). However, this shall only apply to such goods or works for which our manufacturing costs have demonstrably increased by more than 10 % compared to our contract price calculation. In the 1st alternative, the cost increase between the conclusion of the contract and the start of the agreed period of supply or provision shall be decisive for the entitlement of price increase, in the 2nd alternative, the cost

increase between the start of the agreed period of supply or performance and the start of the actual period of supply or performance shall be decisive. However, where fixed prices have been expressly agreed, a price increase under the 1st alternative shall not be possible. The aforementioned rules shall not exclude a judgement by court on this matter pursuant to Article 315 paragraph 3 sentence 2 of the German Civil Code (BGB).

## Article 4 Payment, offsetting and assignment of claims

- (1) The Customer shall instruct payments in good time so that we have free access to the funds on the date of maturity (Fälligkeit) in one of the accounts specified by us. All payments shall be made in Euros.
- (2) The Customer may only offset counterclaims if such counterclaims have been established in a court of law, are undisputed or have been acknowledged by us.
- (3) The Customer shall not assign any claims arising from or relating to the contract to third parties without our consent.

## Article 5 Time and place of fulfilment and transfer of risk

- (1) If a period of time has been agreed for the performance or the supply, such period shall not commence until the Customer has provided the necessary cooperation, for example it has provided the required information or issued approvals so that we can fulfil our obligation to deliver goods or perform the works. Insofar as nothing has been agreed in this respect, the Customer shall cooperate to the extent commonly expected for the specific contract and according to standard practice in the trade. If the Customer delays such necessary cooperation, the period of supply or performance shall be extended appropriately, by at least the period of the delay.
- (2) Deadlines determined or determinable by calendar day for the supply of goods or performance of works shall not apply if the Customer fails to provide or delays necessary cooperation. Such deadlines shall be replaced by reasonable periods of supply or performance.
- (3) In the event that a hindrance to the performance of the contract occurs, for which neither party to the contract is responsible and which we cannot or cannot fully avert by reasonable measures, the agreed period of supply or performance shall be extended by a reasonable time. Hindrances as mentioned above shall in particular comprise events of force majeure or the effects of such events, for example wars, natural disasters, epidemics or pandemics, embargoes or other import or export restrictions, official measures and orders, industrial action, shortages of the required energy supply, raw materials or purchased components. Measures to avert such hindrances shall in particular be deemed not reasonable if they lead to a cost increase of more than 10 % of the total manufacturing costs for all goods and works, insofar as they are not compensated by the right to increase prices according to Article 3 paragraph (2) hereinabove.
- (4) The place of fulfilment shall be the registered office of our company, unless otherwise agreed.
- (5) We shall be entitled to make partial deliveries/performance in parts if the supply or performance can be reasonably broken down into parts. The Customer shall accept each of these parts unless that is contrary to the objective interest of the Customer due to the nature of the goods or works or the intended use the Customer made us aware of at the time of conclusion of contract.
- (6) Under purchase contracts or contracts for the manufacture and supply the Customer must not refuse reception of the goods if those goods show only minor defects (unerhebliche Mängel). The warranty rights shall not be affected by this provision.
- (7) Under a contract for works, the Customer shall declare partial acceptance at our request for any self-contained parts of the works.

## Article 6 Retention of title

- (1) The following shall apply to consumers and enterprises: We herewith retain title to the goods to be delivered according to a purchase contract or a contract for manufacture and supply (goods) until the Customer has settled its consideration or remuneration obligation under the same contract.

For enterprises, the following paragraphs shall additionally apply:

- (2) The retention of title set out in paragraph (1) shall also secure all other claims from the business relationship that have already arisen when the risk relating to the goods is transferred, irrespective of their maturity. If new claims against the Customer arise during the time the title is retained, such claims shall also be secured by the retention of title, irrespective of their maturity.
- (3) Insofar as the Customer settles the claims, we shall upon each settlement select goods the title to which shall be transferred to the Customer, up to a maximum of the value that corresponds to the amount of settlement. The general release obligation in paragraph (10) shall not be affected by this provision.
- (4) During the period of retention of title, the Customer shall maintain the goods in usable and resalable condition at its own expense, in particular it shall carry out any necessary maintenance and servicing work.

- (5) Unless otherwise stipulated below, the Customer shall neither dispose of the goods nor the claims replacing them (for example against insurance companies) for the whole period of retention of title. The Customer shall notify us immediately in writing of any seizures, confiscations or other interventions by third parties.
- (6) The Customer shall be entitled to process (verarbeiten) or transform (umbilden) the goods in the ordinary course of its business, to combine (verbinden) or mix (vermischen) them with other items and to resell the goods or the newly created item, provided that the Customer's intention to do so was already recognizable to us at the time the contract was concluded and the Customer has assigned to us the claims against third parties arising from the resale as stipulated in paragraph (7). Any processing or transformation shall be carried out by the Customer exclusively on our behalf. In the event of combination or mixing, we shall acquire co-ownership in the new item even if an item other than the goods is deemed to be the main item. Our title of co-ownership shall be determined by the ratio of the market value of our goods to the market values of the other items in the combination/mix. The Customer's expectancy (Anwartschaftsrecht) to the retained title or part of title of shall continue in the new item.
- (7) The Customer hereby assigns to us its claims against third parties arising from any resale, namely in the amount corresponding to our claims secured with the retention of title. The same applies to claims against third parties emerging from the loss of or damage to the goods or the new item, for example against insurers or liable parties.
- (8) Without prejudice to our entitlement, the Customer shall remain authorised to collect the assigned claims until further notice. However, we shall not revoke this authorisation or collect the claims ourselves without a justified reason. A justified reason shall in particular be assumed if the Customer defaults on the payment of the secured claims or if there are sufficient indications of grounds for commencing insolvency proceedings against the Customer.
- (9) If the destination of the goods is outside the Federal Republic of Germany and the law of the country of destination does not recognise retention of title or if such retention of title does not have the same protective effect, the Customer shall hereby grant us security for our claims which corresponds as closely as possible to the protective effect of the provisions of this Article 6.
- (10) Insofar as the value of the securities in place exceeds the value of the secured claims by more than 20 %, we shall release respective securities in order to avoid excessive security. The choice of the security to be released shall be at our discretion.

#### Article 7 Liability for defects

##### (1) Only applicable to consumers:

- a) If the goods are used movable items the claim for remedy (Nacherfüllung) of a material defect (Sachmangel) or a legal defect (Rechtsmangel) shall be subject to limitation of one year after the delivery of the item.
- b) The limitation for a claim for remedy in the case of a defect consisting in a right in rem (dingliches Recht) of a third party on the basis of which the surrender of the goods can be demanded, or in any right registered in the land register (Article 438 paragraph 1 No. 1 of the German Civil Code BGB), shall be reduced to a period of five years in the case of buildings and building materials as defined in Article 438 paragraph 1 No. 2 of the German Civil Code (BGB) and to two years in all other cases.
- c) In the case of works, the claim for remedy due to a material or legal defect shall be subject to limitation of one year upon statutory commencement of the limitation period, unless the goods are a building or works whose success consists in the provision of planning or supervision for it.
- d) After the expiry of the relevant period described in a), b) or c), any cancellation or reduction in price due to a defect shall also be excluded.
- e) Claims for damages by the Customer due to a material or legal defect shall be excluded insofar as:
  - the defect does not occur in a building or a building material as defined in Article 438 paragraph 1 No. 2 of the German Civil Code (BGB) and
  - the defect is caused by an act or omission of simple negligence and
  - the damage has not arisen due to death, physical injury or health impairment and
  - we are not liable on the basis of mandatory statutory provisions, for example under the Product Liability Act.
- f) Our contractual liability under any guarantee and any statutory liability due to the fraudulent concealment of a defect shall not be affected by the above restrictions.

##### The following paragraphs shall be applicable to enterprises only:

- (2) Under purchase contracts or contracts for manufacture and supply: if a material defect (Sachmangel) occurs, we shall be entitled to choose the way of remedy (Art der Nacherfüllung). This shall not affect our right to refuse remedy due to disproportionate costs pursuant to Article 439 paragraph 4 of the German Civil Code (BGB).
- (3) If the goods or works are located at a place other than the place of fulfilment at the time when remedy is requested, the Customer shall bear the additional costs incurred by remedy performed at this other place (for example transport costs and travelling expenses).
- (4) a) The Customer's entitlement to remedy in the event of material or legal defects in new goods or in works shall be subject to limitation one year upon statutory commencement of the limitation period, unless the goods or works are a building or works whose success consists in the provision of planning or

- supervision of it, or a good which has been used for a building in accordance with its normal use and has caused a defect in the building.
  - b) After expiry of the period specified in a), the rights to cancellation or price reduction due to defects shall be excluded.
  - c) If a good is a used movable item, any claim for remedy as well as the rights to cancellation or price reduction due to defects shall be excluded.
  - d) Claims for damages of the Customer due to material or legal defects in the goods or works shall be excluded insofar as the defect is caused by an act or omission of simple negligence. This shall not apply insofar as the damages have arisen due to death, physical injury or health impairment or as we are liable on the basis of mandatory statutory provisions, for example under the Product Liability Act.
  - e) Our contractual liability under any guarantee and any statutory liability due to the fraudulent concealment of a defect shall not be affected by the above restrictions.
- (5) The restrictions on claims for remedy and the right to cancel the contract or reduce the price set out in paragraphs (2) to (4) shall not apply if the last contract in the supply chain is a consumer purchase (Verbrauchsgüterkauf). The limitation of our liability for damages shall not be affected.

#### Article 8 Other liability

##### The following shall apply to consumers and enterprises:

- (1) We shall be liable for death, physical injury or health impairment according to the statutory provisions. The same shall apply to all damages based on wilful misconduct (Vorsatz).
- (2) In the event of damages caused by breach of a substantial obligation (wesentliche Vertragspflicht) and which are not covered by paragraph (1), our liability shall be limited to the typical and foreseeable damage at the time of conclusion of the contract insofar as we are responsible for an act or omission of simple negligence. Substantial obligations are obligations the fulfilment of which make the proper execution of the contract in the first place and whose fulfilment the Customer regularly relies on.
- (3) For any such damages not covered by paragraphs (1) and (2), our liability shall be excluded insofar as we are responsible for an act or omission of simple negligence.
- (4) The above limitations of liability shall also apply in the event of fault (Verschulden) on the part of the persons named in Article 278 sentence 1 of the German Civil Code (BGB).
- (5) Our liability pursuant to mandatory statutory provisions such as the Product Liability Act (Produkthaftungsgesetz) shall remain unaffected.
- (6) The following shall additionally apply to enterprises: For damages not covered by paragraphs (1), (2) and (5), our liability for gross negligence shall be limited to the typical and foreseeable damage at the time of conclusion of the contract.

#### Article 9 Business secrets, data protection

- (1) The Customer shall treat as confidential all information and documents that we make available to it within the scope of the business relationship, unless these are also publicly available, or we expressly agree to their disclosure. This shall also apply to a quotation or offer prepared by us. The Customer shall take appropriate measures within its company to keep the probability of loss, unauthorised disclosure and data piracy as low as possible. Except for the goods or works, the Customer shall return to us all documents handed over or destroy such documents on our request or, in the case of electronic data, delete the data in such a way that they cannot be restored as far as technically possible. The statutory duties of the Customer to archive documents shall not be affected by this provision.
- (2) Data belonging to a party to the contract obtained during the business relationship, including personal data, may be stored by the other party to the contract as required. The Customer hereby declares its consent to any required transfer of the data, including personal data, to central departments within the group of companies (STREICHER Group) for the purpose of contract processing, legal advice and legal prosecution as well as for the fulfilment of duties under commercial and tax law.

#### Article 10 Place of jurisdiction, applicable law, partial invalidity

- (1) Disputes arising from or in connection with the contract shall be decided by the courts of ordinary jurisdiction. The place of jurisdiction shall be the competent court at the place of registered office of our company.
- (2) German law shall apply exclusively to all claims and rights arising from the contractual relationship and the statutory claims in connection with it. The conflict of laws rules of private international law and the UN Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.
- (3) If one or more provisions of these GTCs are invalid or void in whole or in part, this shall not affect the other provisions.