

# GENERAL TERMS AND CONDITIONS (GATC) of the ENDERS Engineering GmbH company

## 1. Validity of the conditions

The goods, services and offers of the vendor are made exclusively on the basis of this business connection. These also apply to all future business connections, even when they are expressly stipulated. The conditions are considered to be accepted no later than with the acceptance of the goods or services. Counter-confirmations of the buyer, on the ground of his business and/or purchasing conditions, are hereby contradicted. All agreements, which are made between the vendor and the buyer for the purpose of execution of this contract, are to be put into writing in the contract.

## 2. Offer and conclusion of the contract

The offers of the vendor are non-binding and subject to change. Declarations of acceptance and orders require written confirmation or vendor confirmation by telex to be valid. A legally binding sales contract comes into being when the buyer has accepted a written offer of the vendor.

A. Drawings, illustrations, measurements or miscellaneous performance data are only approximate values and are only binding, when this is expressly stipulated in writing.

B. The sales persons of the vendor are not authorized to make additional oral agreements or to give oral assurances that transcend the content of the written contract. The buyer is solely responsible for complying with and executing recommendations or advice given orally to the buyer from the vendor, his employees or representatives with regard to storage, operation or use of the goods. The vendor is not liable for advice and recommendations that have not been confirmed in writing.

## 3. Price

The prices are calculated, unless otherwise stipulated, as net cash plus the applicable VAT with delivery ex works, so that the buyer must pay for, for example, transport costs, financing costs, packaging and insurance, installation and assembly that occur with the contract award and/or delivery of the goods from the factory of the vendor to the address of the buyer.

## 4. Delivery and performance time

Delivery dates or periods, which can be binding or non-binding, must be in writing. The vendor is not responsible for delays in delivery and services for mandatory stipulated periods and deadlines due to force majeure and due to events that impede or make delivery impossible for the vendor – including, in particular, strikes, lockout, official penalties, etc., even when these occur with vendor contractors or subcontractors. They authorize the vendor to defer the goods and/or services by the length of the impediment plus an appropriate lead time or to withdraw fully or partially from the contract due to the still unfulfilled parts.

When the impediment lasts longer than 3 months, the buyer is authorized to withdraw from the contract with regard to the yet unfulfilled part after an appropriate grace period. If the delivery period is extended or if the vendor is freed from his commitment, then the buyer can not derive any claims for damages from this.

The vendor and buyer are authorized for partial delivery or partial performance at any time.

Compliance with the vendor's obligation to deliver and to perform assumes the timely and orderly fulfillment of the obligation of the buyer. If the buyer defaults in acceptance, then the vendor is justified to request replacement of the loss accrued in the amount of 15 % of the stipulated price, in so far as no abnormal loss is shown; when the default of acceptance occurs, the risk of incidental deterioration and of incidental loss passes to the buyer.

## 5. Passing of the risk

The risk passes to the buyer with the notification of the preparation for consignment, no later than with the dispatch of the delivery parts and indeed also then, when partial deliveries take place or the contractor has taken on other services such as consignment costs or delivery and assembly.

## 6. Warranty

The vendor is not liable for damages to the goods mounted by buyer which resulted through drawing or design. The vendor is not liable for damages, which occurred through normal wear and tear, vandalism, negligence, unusual work conditions, non-compliance with the instructions of the vendor, misuse, accident, alteration or through repairs to the goods, which were not approved by the vendor.

The buyer must immediately inform the vendor in writing of the defect with new machines, but no later than within 7 days after delivery of the goods. Defects, which cannot be discovered upon careful examination within the period, are to be communicated immediately to the vendor after discovery.

This provision applies to all defects in the sense of § 377 I – V of the German Commercial Code. In the case of notification by the buyer that the new machine does not comply with the warranty, the vendor can optionally request that:

A. the buyer keeps the defective part and/or the goods and a service technician of the vendor is sent to the buyer, to make the repair.

B. If the rework fails after a reasonable period, then the vendor can offer the buyer a reduction of the compensation or cancel the contract with regard to new machines.

Only the immediate buyer is entitled to guarantee claims against the vendor and these are not transferable. The preceding clauses contain the exclusive warranty for the products and exclude miscellaneous guarantee claims of any kind against the vendor. This does not apply to claims for damages from warranted property, which should protect the buyer against the risk of consequential harm caused by a defect.

The forthcoming regulations on this § do not apply to used machines, which are delivered to the exclusion of any warranty.

If legally permissible, additional customer claims (1-12), in particular a claim for replacement of damages that have not occurred to the delivery item itself, are excluded.

## **7. Limitation of liability**

Claims for damages from breach of contract, from debt at the conclusion of a contract and from unauthorized operations are excluded against the vendor as well as against his managerial and/or performance assistance, in so far as there are not deliberate or grossly negligent actions. This also applies to claims for damages due to non-fulfillment, however in so far as the replacement is requested for indirect or consequential harm due to defects, unless the liability is based on an additional warranty with new machines, which should protect the buyer against the risk from such damages. Each liability is limited to the price stipulated at the close of the contract. In all cases, a liability of the vendor in accordance with the Product Liability Act as well as miscellaneous liability from manufacturer's liability remains inviolate.

## **8. Used machines**

The buyer is aware that the object of purchase is used. He has satisfied himself of its condition and buys it waiving any warranty and/or assurances. A claim for cancellation, decrease or damages can not be made.

## **9. Reservation of proprietary rights**

The vendor is guaranteed the following collateral up to the fulfillment of all claims that the vendor is entitled to from any legal ground against the buyer now or in the future:

The goods remain the property of the vendor; sale, pledge or security transference is prohibited.

Upon access of a third party to the reserved goods, in particular attachments, the buyer will refer to the property of the vendor and will notify him immediately, so that the vendor can assert his property rights. If the third party is not in the position to reimburse the vendor the judicial or extra-judicial costs accruing in this connection, the buyer is liable for this.

When the buyer's behavior is contrary to the contract, in particular with default of payment, the vendor is authorized to take back the reserved goods and if necessary, to request assignation of the buyer's obligations to return to a third party. There is no withdrawal from the contract in the withdrawal as well as in the attachment of the reserved goods by the vendor. When there is a default in payment, the buyer must reimburse all costs resulting to the vendor from this.

## **10. Payment**

Unless otherwise stipulated, the invoices of the vendor are to be paid as of the payment date. If the payment date is not contractually stipulated, then the payment date is the date stipulated in the invoice created by the vendor. The vendor is authorized to deduct payments initially on old debts, notwithstanding other provisions of the buyer. The buyer is then informed of the nature of the offset that has taken place. If costs and interest have already accrued, then the vendor is authorized to deduct the payments initially from the costs, then from the interest and last on the principal service.

Payment is considered to be made when the vendor can dispose of the amount. In the case of checks, the payment is considered to be made when the check is irrevocably credited.

If the buyer defaults, the vendor is then authorized to demand interest in the amount of up to 0.5 % per week, from the point in time concerned; however, this should be no less than the currently valid interest rate of the German Central Bank. The confirmation of a greater loss by the vendor is permissible.

If the vendor becomes aware of circumstances that place the creditworthiness of the buyer in question, in particular a check that is not honored or payments discontinued or when other circumstances become known to the buyer that place the creditworthiness of the buyer in question, then the vendor is authorized, to call in the remainder of a debt, even when he has accepted checks. In this case, the vendor is also authorized to request advance payments or security deposits. If the remainder of the debt is not paid immediately, then the right to use of the buyer to the reserved goods lapses. The contractor is then authorized to request the delivery of the reserved goods immediately to the exclusion of any right of retention and pick these up from the buyer. The customer bears all costs connected with this, including storage costs. With payment default and payment cessation as well as with gross breaches of contract by the customer, the contractor is also entitled to the right to cancel the orders that have not yet been executed, in addition to miscellaneous claims. The signatory of the contract is personally liable for the fulfillment of the contractually determined payment. If the impossibility or the inability of the contractor occurs during the default of acceptance or through the default of the customer, then he remains obligated for service in return.

The buyer is not authorized for offset, charging, retention or reduction, even when notification of defects or counterclaims is made.

## **11. Export conditions**

The INCOTERMS for the international trade guidelines of the Chamber of Industry and Commerce stand in accordance with these contract conditions, which become effective at the conclusion of the contract. If nothing deviant emerges from the context, then each concept or expression, which was defined in accordance with the provisions of INCOTERMS or has received a definite meaning, the same meaning in accordance with the contract provisions. However, the contract provisions apply in doubtful cases. The buyer is responsible that all legal requirements and provisions of the recipient country are met in the importing of the goods. If there is no agreement deviating from the contract between the buyer and the vendor, ex works Oberleichtersbach always applies.

The vendor assumes no liability for claims or damages, when the damage has occurred after the consignment or during the transport.

The payment of all amounts due to the vendor should be made through a certified bank credit issued by the buyer and by a bank in the Federal Republic of Germany accepted by the vendor, or when the vendor waives this requirement in writing, through acceptance of the vendor and delivery of a bill drawn on the buyer to the vendor, which is payable within 60 days after sight through the order of the vendor at the branch of the HypoVereinsbank or Commerzbank which was indicated on the bill.

## **12. Applicable law, jurisdiction, severability**

The law of the Federal Republic of Germany applies to the exclusion of the standard law on an international purchase of goods for this business condition and the total privity of contract between vendor and buyer. In so far as the buyer is a registered trader in the sense of the Commercial Code, legal entity of the public law or special fund under public law, the business location of the vendor is the exclusive jurisdiction (Fulda) for all disputes arising directly or indirectly from the contractual relationship. If a provision in these conditions or provisions within the scope of miscellaneous agreements should be or become impracticable, then the effectiveness of all miscellaneous provisions or agreements is not affected by this.