



**WOMAttec**  
Maschinenbau GmbH

## General Conditions for Sale

of WOMAttec Maschinenbau GmbH, as of May 2015

**This is a translation of a German language document. If there are any conflicts between this document and the original German language document, the German language document shall apply.**

### **1. Area of Application**

- (1) These General Sales Terms and Conditions are valid for a company, legal persons under private and public law.
- (2) The conditions herein apply to deliveries and services as agreed (including ancillary services such as suggestions, planning aids, and consulting).
- (3) We will not be bound by changes to these conditions unless and until we explicitly accept them.

### **2. Offers, offer documents, prices**

- (1) Orders become binding only with our confirmation of the order.
- (2) Our prices apply - unless otherwise expressly agreed - ex works including packaging and VAT (value-added tax). They are only binding for the object designated in the offer / order confirmation and the specified place of use.
- (3) If changes to our price basis occur before delivery, we reserve the right to adjust our prices accordingly. However, this only applies to delivery periods from more than 4 months and for price adjustments of up to 10%. For higher percentages, a new price adjustment is necessary in consultation with the customer. If no price has been previously agreed upon, our prices valid on the day in question shall apply.
- (4) A reduction in an order quantity shall result in an increase in the unit price and the agreed tool cost portions, with special consideration being given to any additional set-up and start-up costs. If there is a significant change in certain cost factors (salaries, input materials, energy, etc.), the agreed price may be reasonably adjusted according to the influence of these factors.
- (5) The prices of earlier or current orders are not binding for repeat orders.
- (6) If, in the case of long-term contracts (contracts with a term of more than 24 months and open-ended contracts), there is a substantial change in salaries, material or energy costs, each contracting party shall be entitled to demand an appropriate adjustment of the price taking their factors into account.
- (7) If a binding order quantity has not been agreed, we shall base our calculation on the non-binding order quantity (target quantity) expected by the partner for a specific period. If the partner purchases less than the target quantity, we shall be entitled to increase the unit price accordingly. If the customer purchases more than the target quantity, we shall reduce the unit price accordingly, provided that the partner has announced the additional requirement at least three months before to delivery.
- (8) In the case of delivery contracts with a delivery date call-off, we are entitled to manufacture the ordered quantity. The customer agrees to accept the ordered goods within one year and to pay the invoiced purchase price. The invoice is also due for payment if the customer does not accept the goods. Additional costs caused by a delayed call-off or subsequent change in the call-off with regard to time or quantity by our partner shall be borne by him; our calculation shall be decisive.
- (9) The information and illustrations contained in brochures and catalogues are approximate values customary in the industry, unless they have been expressly designated as binding by us.

### **3. Confidentiality**

- (1) Each contracting party shall use all documents (including samples, models, and data) and knowledge obtained from the business relationship only for the jointly pursued purposes and shall keep them secret from third parties with the same care as its own documents and knowledge if the other contracting party designates them as confidential or has an obvious interest in keeping them secret.

(2) This obligation begins with the first receipt of the documents or knowledge and ends 36 months after the end of the business relationship.

(3) This obligation shall not apply to documents and knowledge which are generally known, or which were already known to the contractual partner if upon receipt he is not obliged to maintain confidentiality, or which are subsequently transmitted to a third party entitled to pass them on, or which are developed by the receiving contractual partner without the use of documents or knowledge of the other contractual partner which are to be kept secret.

(4) Samples, data and similar objects may only be reproduced within the framework of operational requirements and the copyright regulations are duplicated.

(5) If goods are manufactured and delivered in a design specifically prescribed by our contractual partner, he shall assume the responsibility to ensure that the design does not infringe the rights of third parties, in particular patents, utility models and other industrial property rights, copyrights and know-how. If this is nevertheless the case, the contractual partner shall indemnify us against all claims.

#### 4. Drawings and descriptions

If one contractual partner provides the other with drawings or technical documents relating to the goods to be supplied or their manufacture, these shall remain the property of the submitting contractual partner.

#### 5. Samples and manufacturing equipment

(1) Unless otherwise agreed, the manufacturing costs for samples and production equipment (tools, molds, templates, etc.) shall be invoiced separately from the goods to be delivered. This also applies to production equipment which must be replaced as a result of wear.

(2) The costs for normal maintenance (but not wear), proper storage and the risk of damage to or destruction of the production equipment shall be borne by us.

(3) If the partner suspends or terminates the cooperation during the production period of the samples or production materials, all production costs incurred up to that point shall be borne by him.

(4) Even if the partner has paid for them, the means of production shall remain in our possession at least until completion of the delivery contract. Thereafter, the partner shall be entitled to demand the return of the means of production if an amicable agreement has been reached on the date of return and the partner has fulfilled its contractual obligations to the full extent.

(5) We will store production equipment free of charge for 3 years after the last delivery to our partner. Thereafter, we shall request our partner in writing to comment on further use within 6 weeks. Our duty of safe custody ends if no statement is made within these 6 weeks or no new order is placed.

(6) Customer-related production equipment will only be used by us for deliveries to third parties with the prior written consent of our partner.

#### 6. Character and / or services

(1) The information on product features contained in our public statements, such as catalogues, brochures, circulars, illustrations, advertisements, and price lists, shall only belong to the character insofar as they have become part of the contract.

Public statements of a third manufacturer or their representative are only part of the character of the goods if they are agreed in the contract or if we have made them our own expressly and in writing in public statements.

(2) We reserve the right to make customary technical changes until delivery, in particular improvements, if these only lead to insignificant changes in the nature of the product and if the customer is not unreasonably affected.

(3) Information on the nature or durability of a product or service does not contain a guarantee (assurance) within the meaning of § 276 para. 1 BGB (German Civil Code) and no character or durability guarantee within the meaning of § 443 BGB if we have not expressly assumed such a guarantee in writing.

## 7. Conditions of Payment

- (1) Unless otherwise agreed, all invoices are due for payment net within 30 days of the invoice date.
- (2) If we have undisputedly delivered partially defective goods, our partner shall nevertheless be obliged to make payment for the defective part, unless the partial delivery is of no interest to him. In all other respects, the partner may only offset counterclaims which have been established as legally binding or which are undisputed.
- (3) In the event of overdue payment, we shall be entitled to charge interest on arrears at the rate charged by the bank for current account credits, but at least 8% above the respective base rate of the European Central Bank.
- (4) In the event of default in payment, we may, after written notification to the partner, suspend performance of our obligation until the end of payments. Bills of exchange and cheques shall only be accepted after agreement and only on account of performance and subject to their discountability. Discount charges will be deducted from the due date of the invoice amount. A guarantee for the timely presentation of the bill of exchange and cheque and for the collection of bill protest is excluded.
- (5) If it becomes apparent after conclusion of the contract that our payment claim is at risk due to the partner's lack of ability to pay, we may refuse performance and set the partner a reasonable deadline within which he must pay concurrently with delivery or provide security. If the partner refuses or the deadline expires without success, we are entitled to withdraw from the contract and claim damages.
- (6) In the case of delivery contracts with a "call-off" date, we are entitled to manufacture the ordered quantity. The customer undertakes to accept the ordered goods within one year and to pay the invoiced purchase price. The invoice is also due for payment if the customer does not accept the goods. Additional costs caused by a delayed call-off or subsequent changes to the call-off with regard to time or quantity by our partner shall be borne by him; our calculation shall be decisive in this respect

## 8. Delivery

- (1) Unless otherwise agreed, we deliver "ex works" (EXW). Decisive for compliance with the delivery date or the delivery period is the notification of readiness for dispatch or collection by us.
- (2) The delivery period begins with the dispatch of our order confirmation and is extended appropriately if the conditions of force majeure and the definition of these conditions are met.
- (3) Partial deliveries shall be permissible within a reasonable scope of goods. They will be invoiced separately.
- (4) If we are in default of delivery for the first time, a reasonable period of grace shall be granted. If the grace period expires without fulfillment, our contractual partner shall be entitled to withdraw from the contract with regard to the unfulfilled part of the contract. The assertion of damages caused by delay is excluded.

## 9. Dispatch and transfer of risk

- (1) Goods declared ready for dispatch must be accepted by the partner without delay. Otherwise we shall be entitled to dispose of them at our discretion or to store them at the expense and risk of the partner.
- (2) In the absence of special agreements, we shall select the means and route of transport.
- (3) The risk shall pass to the partner upon commencement of storage, but at the latest upon leaving the factory or warehouse, even if we have accepted delivery.

## 10. Delay in delivery

- (1) If we can foresee that the goods cannot be delivered within the delivery period, we will inform the partner immediately in writing, inform him of the reasons for this and, if possible, state the anticipated delivery date.
- (2) If the delivery is delayed due to force majeure or due to action or omission on the part of the partner, an extension of the delivery period appropriate to the circumstances shall be granted.
- (3) The partner is only entitled to withdraw from the contract if we are responsible for non-compliance with the delivery date and a reasonable grace period has been given. The assertion of damages caused by delay is excluded.

## 11. Retention of title

- (1) The delivered goods shall remain our property until all current and future (including conditional) claims arising from the business relationship with our contractual partner have been fulfilled. In the case of a current account, the reserved property shall be deemed security for the balance claim.
- (2) The contractual partner is permitted to resell the goods subject to retention of title within the framework of his ordinary business operations, provided that he also agrees to a retention of title with his business partner. At the same time he assigns to us in advance the claims to which he is entitled from his resale in the amount of the value of the respective reserved goods. We hereby accept this assignment. Pledging and transfer by way of security of our reserved goods is not permitted.
- (3) Any processing of the reserved goods within the meaning of § 950 BGB (German Civil Code), by our contractual partner shall always be on our behalf. In the event that the reserved goods are combined or mixed in accordance with §§ 947, 948 BGB, we shall acquire co-ownership of the new object in the ratio of the invoice value of the reserved goods to the other combined or mixed objects at the time of the combination or mixing. If our contractual partner has become the sole owner in the case of the combination or mixing of the reserved goods in accordance with §§ 947, 948 BGB the pro rata transfer of co-ownership of the main item to us shall be deemed to have been agreed accordingly; in this case our contractual partner shall store the item for us free of charge (anticipated ownership institute).
- (4) In the event of enforcement measures against our reserved property or the claims assigned in advance, the customer must inform us immediately and provide us with the necessary documents.
- (5) The maximum cover for the collateral is 120%. We shall release the securities held by us at the request of our contractual partner to the extent that their realisable value exceeds the claims to be secured by more than 20%.
- (6) A separate agreement has been reached between the parties for the agreement of the reservation of title, which becomes the subject of the contract the agreement shall have legal effect even if it has not been signed by our contractual partner.

## 12. Claims of the customer in case of defects (material defects and defects of title)

- (1) Rights of the customer due to material defects are subject to proper inspection and notification of defects (§ 377 HGB). If an acceptance of the goods or an initial sample inspection has been agreed upon, the notification of defects which the partner would have been able to ascertain with careful acceptance or initial sample inspection is excluded.
- (2) The quality of the goods shall be governed exclusively by the agreed technical delivery specifications. If we have to deliver according to drawings, specifications, samples, etc. of our partner, the latter assumes the risk of suitability for the intended purpose.
- (3) We shall be entitled to remedy the defect at our discretion by repair or delivery of a defect-free item (subsequent performance). In case of failure of the subsequent performance, the customer may reduce the purchase price or withdraw from the contract at his discretion.



(4) We shall only be obliged to pay damages if we are at fault. Liability for slight negligence is excluded. Assured properties must be expressly designated as such in writing. Indirect damage and consequential damage caused by a defect are excluded, as is the claim for loss of profit and processing costs.

(5) The warranty ends 12 months after the transfer of risk.

(6) Limitation of claims due to defects, insofar as these are not already excluded by these conditions:

The statutory limitation period shall apply to claims for damages due to defects and to claims arising from unlawful acts.

All other claims of the customer due to material defects, in particular for subsequent performance, reimbursement of expenses in the event of self-performance, rescission, reduction and reimbursement of futile expenses shall become statute-barred within one year.

A suspension of the statute of limitations of the purchaser's claims in negotiations shall only occur if we have agreed to negotiations in writing. The suspension shall end three months after our last written statement.

### 13. Warranty and Liability

Limitation of liability on the merits:

Claims for damages or claims for reimbursement of unnecessary expenses due to breaches of duty or if the due service is not provided by us or is not provided as owed, due to delay or in the case of defects, the customer shall only be entitled for damage resulting from injury to life, body or health which is based on our at least negligent breach of duty or an intentional or negligent breach of duty by one of our legal representatives or vicarious agents, other damages caused by at least grossly negligent breach of duty on our part or by at least grossly negligent breach of duty by one of our legal representatives, executives or vicarious agents or by at least negligent breach of essential contractual obligations (cardinal obligation) on our part or by at least negligent breach of duty by one of our legal representatives, executives or vicarious agents, and damages which fall within the scope of protection of an assurance given by us (guarantee, § 276 para. 1 BGB) or a quality or durability guarantee (§ 443BGB).

### 14. Force majeure

Force majeure, labour disputes, unrest, official measures, failure to deliver by our suppliers and other unforeseeable, unavoidable and serious events shall release the contracting parties from their performance obligations for the duration of the disruption and to the extent of its effect.

This shall also apply if these events occur at a time when the affected contractual partner is in default, unless he has caused the default intentionally or through gross negligence. The contracting parties shall be obliged to provide the necessary information immediately within the bounds of what is reasonable and to adapt their obligations to the changed circumstances in good faith.

### 15. Place of performance, place of jurisdiction and applicable law

Unless otherwise stated in the order confirmation, our place of business shall be the place of performance.

The place of jurisdiction for all legal disputes, also within the framework of a bill of exchange and cheque process, shall be our registered office. We are also entitled to sue at the partner's place of business.

The law of the Federal Republic of Germany shall apply exclusively to the contractual relationship.

The application of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG – “Vienna Sales Convention”) is excluded.

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