

**General Terms and Conditions of Delivery and Sale, updated 1999,  
Maschinen- und Stahlbau Dresden (hereinafter referred to as 'MSD'), a branch of Herrenknecht AG**

**1. General/Miscellanea**

1.1 Our Terms and Conditions of Delivery and Sale apply to the exclusion of all others; we do not acknowledge any conditions from the Purchaser that contradict or deviate from our terms and conditions of sale, unless we have specifically approved them in writing. Our terms and conditions of sale also apply if, whilst cognisant of the Purchaser's conditions that contradict or deviate from our terms and conditions of sale, we still perform the delivery unreservedly.

1.2 All agreements between us and the Purchaser for the purpose of performing this Contract must be laid down in writing.

1.3 The documents, pictures, general drawings, indications of weights and measurements, information on processes, consumption and performance are only approximate, unless specifically designated as binding.

**2. Conclusion of the Contract**

2.1 If the order is to be qualified as a contract we can accept this within 4 weeks. The Contract is deemed entered into if after receiving the order we dispatch a declaration of acceptance within the particular period stipulated by the Buyer.

2.2 The Contract materialises if between tender and acceptance there is at least an accord with regard to the subject of the Contract, the quality, the period of the Contract and the price.

2.3 We reserve our proprietary right and copyright to pictures, drawings, calculations and other documents; they must not be made accessible to third parties. This applies especially to such written papers as are designated confidential; the Purchaser requires our express written approval before passing them on to third parties.

**3. Prices, terms and conditions of payment**

3.1 The prices are for goods loaded ex works exclusive of packing. Packing is invoiced separately.

3.2 Our prices do not include statutory Value Added Tax; the applicable rate of VAT on the day the invoice is raised will be entered separately on the invoice.

3.3 The deduction of discounts requires special written agreements.

3.4 Unless otherwise stated in the confirmation of order, the purchase price is due for payment within 18 days of the date of invoice. If the Purchaser should default on payment we are entitled to charge 4 % on top of the German Bundesbank's bank rate at the time. If we are able to prove greater loss or damage caused by the delay we have the right to make an appropriate claim.

3.5 The Purchaser is only entitled to set-off if its counterclaims are established in law, uncontested or acknowledged by us. Furthermore, the Purchaser is only entitled to right of retention if its counterclaim is based on the same contractual relationships.

3.6 With mechanical engineering deliveries the agreed price is due 18 days from the date of the invoice as follows:

- 30 % upon receipt of the confirmation of order
- 60 % upon dispatch or notification that the goods are ready for dispatch

10 % upon completion of assembly or by no later than 1 month after delivery

With steel structure deliveries the Purchaser is required to make a down payment of 20 % of the amount of the order when the confirmation of order is received. As for the rest invoicing is subject to the Building Regulations under the rules of the VOB/B or VOL.

**4. Delivery period**

4.1 The commencement of the delivery period indicated by us presupposes that all technical questions have been clarified on time, that the Purchaser has obtained the documents required and that they have been cleared.

4.2 If after we have already delayed delivery the Purchaser stipulates a reasonable period of grace with a threat of rejection, and this period of grace passes to no avail, the Purchaser is entitled to rescind the Contract; the Purchaser is only entitled to claim damages for non-performance amounting to the foreseeable loss or damage if the delay was due to wilful intent or gross negligence.

4.3 The prerequisite for our observing our obligation to deliver is the Purchaser's timely, due and proper compliance with its obligation. If the Purchaser delays acceptance or contravenes other obligations to co-operate, we have the right to charge any loss or damage incurred by us including any additional expenditure. In this case the risk of accidental ruin or fortuitous deterioration of the goods of purchase transfers to the Purchaser from the time the Purchaser defaults on acceptance.

**5. Transfer of risk**

Unless stated otherwise in the confirmation of order the delivery is agreed ex works. If the Purchaser so wishes, we shall obtain transportation insurance to cover the delivery, with the Purchaser bearing the costs thus incurred.

**6. Warranty covering defects**

6.1 The Purchaser's warranty rights presuppose that the Purchaser has complied duly and properly with the obligations to inspect and notify complaints under §§ 377, 378 of the HGB [Code of Commerce]. If there is a defect in the goods of purchase for which we are responsible, we are entitled to opt for rectifying the defects or making a replacement delivery.

6.2 If we are not willing or not in a position to rectify the defects or make a replacement delivery, especially if the delivery is delayed beyond the reasonable period for reasons beyond our control or if we otherwise fail to rectify the defects or make a replacement delivery, the Purchaser is entitled to opt for rescinding the Contract or demanding a corresponding reduction in the purchase price. We are however not liable for such loss or damage extraneous to the goods being delivered themselves; in particular we are not liable for the Purchaser's lost profit or other financial losses.

6.3 The preceding limitation on liability does not apply if the cause of loss or damage is due to wilful intent or gross liability. Nor does it apply if the Purchaser claims damages for non-performance owing to the absence of representations.

6.4 The warranty period is 6 months, calculated from the transfer of risk. This period is a period of limitation and also applies to claims for compensation for subsequent loss or damage arising from defects.

## **7. Proprietary rights**

### **7.1**

We reserve the right to ownership of the goods of purchase until all payments arising from the Contract of Delivery have been received. If the Purchaser should be in breach of contract, by being in arrears with payment in particular, we are entitled to retrieve the goods of purchase. Our retrieval of the goods of purchase is not a rescission of the Contract unless we have declared this expressly in writing. After retrieving the goods of purchase we are authorised to commercialise them with the proceeds of the sale being credited to the Purchaser's liability.

### **7.2**

If the goods of purchase are pledged as security or otherwise seized by third parties the Purchaser is required to inform us immediately in writing.

### **7.3**

The Purchaser is entitled to re-sell the goods of purchase in the ordinary course of business; however, the Purchaser surrenders as of now all claims in the amount of the proceeds of the sale, irrespective of whether the goods of purchase were re-processed without or pursuant to agreement. The Purchaser remains empowered to collect this claim after having surrendered it.

### **7.4**

If the Purchaser processes or transforms the goods of purchase, this is always on our behalf. If the goods of purchase are processed with other objects that do not belong to us, we acquire co-ownership of the new article in proportion to the value of the goods of purchase to the other objects being processed at the time of the processing. The same applying to the article created by processing also applies to the goods of purchase delivered subject to reservation.

### **7.5**

If the goods of purchase are inseparably blended with other objects that do not belong to us, we acquire co-ownership of the new article in proportion to the value of the goods of purchase to the other blended objects at the time of the blending. If the blending is such that the Purchaser's article is regarded as the main article, it is deemed agreed that the Purchaser transfers pro rata co-ownership to us. The Purchaser safeguards the sole ownership or co-ownership thus created for us.

## **8. Place of jurisdiction**

The place of jurisdiction is Dresden. We are however entitled to take the Customer to court in the latter's general jurisdiction.

## **9. Tolerances**

The exclusive criteria applicable to the tolerances being produced are the provisions specified in the confirmation of order. Provided the tolerances to be complied with have no effect on serviceability, the Purchaser cannot make any claims under warranty or demand the products be re-manufactured. The Purchaser is referred to a reduction. The Supplier is not liable for consumption levels, unless a tolerance of 10 % is exceeded.

## **10. Acceptance**

The Purchaser is obliged to accept the goods once completed. Negligible defects do not hinder acceptance. The goods can also be accepted by being put into operation.

## **11. Protective rights**

The drawings and goods delivered by the Supplier are subject to copyright or registered design rights. The Purchaser is liable for the infringement of these rights.