

# General Terms and Conditions of Business (GTCB) A.H. Meyer Maschinenfabrik GmbH

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## NOTICE

*This is a translated version from the original German version of the "Allgemeine Geschäftsbedingungen (AGB)" of A.H. Meyer Maschinenfabrik GmbH. If there are any differences between the understanding of these GTCB and the German original version the latter prevails and is controlling.*

### I. Business transactions

#### § 1 Scope

1. In addition to other contractual agreements, these GTCB shall exclusively apply to all transactions between us and the purchaser or customer, hereinafter known as the Customer. Even if the service is provided or payment accepted, we shall not acknowledge other terms issued by the Customer unless we expressly agree to their being valid in writing.

This shall also apply to general terms of business other than the general terms of purchasing of the Customer, in particular, but not only, for blanket contracts of supply, quality assurance contracts or service contracts of the Customer if the provisions therein are used on multiple occasions by it and have not been negotiated with us.

2. These GTCB shall only apply to transactions with enterprises in the sense of Section 14 of the German Civil Code [BGB].

3. These GTCB shall also apply to all future business relationships without their having to be included until such time as we produce new general terms of business.

4. All agreements made between us and the Customer as part of contract negotiations must be set out in writing for verification purposes and must be confirmed by both parties.

5. Side-agreements, retrospective contract amendments and the acceptance of a guarantee, particularly assurances of properties or the acceptance of a procurement risk, must be made in writing if they are made by persons who have no rights of representation.

A lack of communication on our part shall not be deemed to be tacit agreement if this results in duties for us.

#### § 2 Planning and advice

1. If we supply planning or advice services, the Customer must provide us with all the required or expedient information and documents in full for this purpose.

2. The Customer undertakes to review the plans or advice to ensure they are feasible before implementing them and also review the premises on which such plans or advice are based and to notify us without delay of any objections. This shall also apply to any initial drafts.

3. Our planning and advance services are service-based and shall only cover the services and products we supply. These services shall only constitute solution aids for the Customer and shall not include any guarantee that they are the best or most cost-effective solution aid. They shall not extend to advice outside of the contract, in other words to statements which are made without products being sold or services provided by us.

4. Our oral or written application-based advice shall not exempt the Customer from its duty to carry out its own review of the products and services to ensure that they are suitable for the intended purpose.

5. Our advice services are based on empirical values. Our advice shall be non-binding if it extends to circumstances where we simply cannot know whether items are correct, in other words, for example the composition of the raw material or the work carried out by sub-contractors.

Failure to make statements shall not constitute advice.

6. If the products purchased from us or the services we provide are not defective, their use or processing shall be carried out exclusively at the Customer's responsibility.

#### § 3 Formation of Contract

1. Our quotations shall be non-binding, they shall be regarded as a request from the Customer to submit a quotation.

2. In principle the order issued by the Customer shall be regarded as an offer to conclude a contract.

3. We shall accept the order within 4 weeks unless another acceptance deadline has been agreed in the form of an order confirmation signed by us which we will send to the Customer.

4. Our services are set out in the order confirmation.

5. The initial charge for processing a quotation shall generally be zero. Additional quotations and design work shall only be free if the contract is valid and remains so.

6. Descriptions and images of our products and services in technical documents, catalogues, brochures, circulars, advertisements and price lists shall be non-binding unless their inclusion in the contract has been expressly agreed; they shall not release the Customer from conducting its own inspections.

Descriptions of products and services on the internet can naturally only be of a general nature; if the Customer wishes to use them to derive binding property agreements or the suitability for use of said products or services for its application, it must make reference to this in the purchase order.

7. All the details for completing the order must be set out in the Customer's order. This applies to all goods, works and other services to be provided by us. These shall particularly, but not exclusively, include details of item designation, quantity, dimensions, material, material composition, pre-treatment, processing specifications, treatment guidelines, storage, standards and all other technical parameters and characteristic physical data.

Missing, incorrect or incomplete details shall be regarded as expressly not agreed and shall not give rise to any obligations on our part, either in the sense of fulfilment and warranty or in the sense of compensation claims.

8. If the order issued by the Customer differs from our quotation, the Customer must specially highlight the differences.

9. We shall be entitled to obtain further information for the purpose of ensuring that the order can be completed properly.

10. Orders should be issued in writing or electronically (EDI); orders placed orally or by telephone shall be completed at the Customer's risk.

11. If the Customer cancels an order which has already been accepted by us, we shall be entitled to charge 10% of the price for the goods or services for the costs incurred by processing the order and for loss of profit, notwithstanding the possibility of claiming higher actual damages. The Customer shall be at liberty to provide evidence that our costs were in fact less than this.

#### § 4 Call orders

1. For contracts of supply on call we must be notified of binding quantities at least 3 months before the delivery date unless otherwise agreed. In isolated cases it may be necessary to extend this period, for example due to material lead times.

2. Additional costs incurred by a late call order or retrospective changes to the call order in terms of time or quantity by the Customer shall be borne by the Customer; our costings shall be decisive in this case.

3. Unless otherwise agreed, all call orders must be accepted within one year of the order being placed without this requiring any request to accept such orders. If this deadline passes, we shall be entitled to invoice the goods or services and ship them at the expense and risk of the Customer or to cancel the contract with immediate effect.

#### § 5 Modifications

1. A separate contractual agreement shall be required for any modifications to the goods or services requested after the contract has been concluded.

2. We reserve the right to modify the goods or services within reason in the event that we have not received the required information or have received incorrect information. Negative effects caused by a lack of or incorrect information, in particular additional costs or damages, shall be paid by the Customer.

3. We reserve the right to make technical modifications to the goods or services which do not jeopardise the objective of the contract.

4. Quantity discrepancies which are normal for the industry shall be permitted.

5. Part consignments and part services shall be permitted as long as this does not have a major adverse effect on use and

does not jeopardise the objective of the contract. They may be invoiced separately.

#### **§ 6 Delivery or performance period**

1. If a delivery or performance period has been agreed, this shall commence upon despatch of our confirmation of order, but not before all details of the order have been finally clarified, in particular all technical issues, and the Customer has duly fulfilled all his duties of cooperation, such as the procurement of the required official permits or certificates or the payment of a deposit, have been fulfilled properly; the same shall apply to delivery dates for the goods or services.

2. In the event of mutually agreed modifications to the goods or services, new delivery or performance dates periods and dates for said goods and services must be agreed.

This shall apply even if fresh negotiations are held about the goods and services after the contract has been concluded without any modification being made to the goods or services.

3. Delivery and performance periods or dates are subject to perfect and timely upstream supply and unforeseeable interruptions to production.

4. Delivery and performance periods for the goods or services shall be deemed to have been met if the goods or services have left our plant by the elapse of the lead time or have been handed over to the transport contractor at our plant or we have notified the Customer that the goods or services are ready for shipment. If an acceptance procedure is required (unless the goods or services are rejected with justification), the date of the acceptance procedure or, if one has not been agreed, notification that the goods or services are ready for acceptance shall be decisive.

5. We shall be entitled to deliver the goods or complete the service before the agreed date.

#### **§ 7 Default on the part of the Customer**

1. If the Customer fails to accept the goods or services by the agreed delivery date or lead time or fails to attend an agreed acceptance procedure for reasons that are its responsibility, we may demand compensation for any additional costs we incur as a result.

In particular we shall be entitled to charge the Customer storage costs of 0.5% for every month or part of a month, subject to a maximum total of 5% of the price for the goods or services. Either of the parties to the contract shall be entitled to provide evidence that the actual storage costs were higher or lower than this figure.

2. Furthermore, we shall be entitled to select a suitable storage site at the expense and risk of the Customer and to insure the goods or services at its expense.

3. If we are entitled to demand compensation rather than the completion of the service, we may demand 15% of our price as compensation, notwithstanding the possibility of demanding higher actual damages, unless the Customer can provide evidence that we have not suffered any damages or our damages were considerably lower than this lump sum.

#### **§ 8 Force Majeure**

In cases of force majeure, our lead times and delivery dates shall be extended by the duration of the problem which has occurred.

This shall also include, but not exclusively, circumstances which are beyond our control such as war, fire damage, strikes, lock-outs, traffic problems, official orders, plant shut-downs or major operating problems such as lack of material or energy suffered by us, our sub-contractors or suppliers. This shall apply even if we were already in default when these circumstances occurred.

We shall notify the Customer without delay of the start and end of such problems.

If the goods or services are delayed by more than six weeks, both the Customer and we shall be entitled to cancel the contract relating to the scope of the contract affected by the delay. Compensation shall not be payable to the parties to the contract as a result of such circumstances.

#### **§ 9 Terms of payment**

1. Unless otherwise agreed, all prices shall be understood in euros, net on an "ex-works" basis, exclusive of statutory value-added tax at the rate in force on the date of the invoice. Additional costs such as packaging, freight, shipment costs, customs duties, installation, insurance and bank charges shall be charged separately.

We shall only provide insurance cover for the goods or services during shipping at the request and expense of the Customer.

2. We shall be entitled to change the agreed price within reason in the event that increases in costs, in particular due to material price changes, occur after the conclusion of the contract. We shall provide the Customer with evidence of the reason for the change of cost on request.

3. We shall be entitled to change the price within reason if changes occur before or during the completion of the order because the information provided by the Customer and the documents supplied by it were incorrect or the Customer requests other modifications.

4. We shall be entitled to demand a reasonable advance payment when the contract is concluded. Interest shall not be payable on this.

5. Unless otherwise agreed, invoices shall be payable within 20 days of receipt on a strictly net basis. They shall be payable without any deductions. In the event that they are not paid, the Customer shall be in default on the due date without this requiring any further warnings.

Discounts and concessions shall only be granted by special agreement.

Part payments shall require separate written agreement.

6. Settlement by bills of exchange shall require separate prior agreement. Discount charges and bills of exchange costs shall be paid by the Customer. Invoice settlement by cheque or bill of exchange shall only be for the purpose of fulfilment and shall not be regarded as payment until they have been redeemed without reservation.

7. If the Customer has several outstanding invoices from us and if payments are not made by the Customer against a specific invoice, we shall be entitled to decide to which of the outstanding invoices the payment shall be assigned.

8. In the event of default, forbearance or part payment, we shall be entitled to charge normal bank interest but at least at a rate of 8 percentage points per annum above the relevant base rate and to withhold further goods and services until all outstanding invoices have been settled. We reserve the right to provide evidence that we suffered higher damages.

9. By placing the order the Customer confirms that it is solvent and creditworthy.

If there is justified doubt about the solvency or creditworthiness of the Customer, for example due to repeated late payments, default or rejected cheques, we shall be entitled to demand security or cash payment on a quid pro quo basis. If the Customer fails to meet this demand within a reasonable deadline which has been set for it, we shall be entitled to cancel the non-fulfilled part of the contract or stop deliveries until we are in receipt of the payments. No such deadline shall be required if the Customer is clearly incapable of providing security, for example if an application has been made to open insolvency proceedings against the Customer's assets.

10. The Customer shall only be entitled to set off against our claims if its counter-claim is undisputed or has been fixed by a court of law.

The assignment of debts payable to us shall require our consent.

11. The Customer shall only have a right of retention if the counter claim is based on the same contract and is undisputed or has been fixed by a court of law or if we commit a major breach of our duties from the same contract despite receiving a written warning and we have not offered reasonable safeguard.

If a service provided by us is undisputedly defective, the Customer shall only have a right of retention for a reasonable amount relative to the defects and the likely costs for their rectification.

12. The payment deadlines shall remain in force even if delays occur to the delivery through no fault of ours.

13. We shall require a so-called certificate of arrival from the Customer in order to be exempt from value-added tax for deliveries within the European Community. The Customer therefore undertakes to confirm after receipt of the contract goods in writing that, acting in the role of customer, it has received the contract goods which constitute a delivery within the European Community.

14. If value-added tax is not included in our invoice, in particular because we have assumed that the goods have been supplied or the services provided on the basis of a "single market transaction" in the sense of Section 4 No. 1 b together with Section 6a of the German Value-Added Tax Law [UStG], and we are retrospectively charged with a value-added tax debt (Section 6 a IV of the Value-Added Tax Law), the Customer undertakes to reimburse us with the amount which has been charged to us. This duty shall apply regardless of whether we are retrospectively charged with value-added tax, import value-added tax or comparable taxes in Germany or elsewhere.

15. We shall be entitled to demand a reasonable advance payment when the contract is concluded. Interest shall not be payable on this.

#### **§ 10 Place of fulfilment, transfer of risk, acceptance**

1. The place of fulfilment for the services and payments specified in the order shall be our registered office.

2. The risk of destruction, loss or damage to the goods or services shall be transferred to the Customer when we provide notification of their completion. If shipment has been agreed, the risk shall be transferred to the Customer when the goods are dispatched or they have been handed over to the haulage contractor.

3. If an acceptance procedure is required, it shall be decisive for the transfer of risk. It must be conducted promptly on the acceptance date and if no such date has been agreed, after notification that the goods or services are ready for the acceptance procedure.

The Customer may not refuse acceptance if the goods or services have a minor defect.

If the acceptance procedure is delayed or not conducted as a result of circumstances which are not our fault, the risk shall be transferred to the Customer on the date on which it is notified that the goods or services are ready for the acceptance procedure. In this case, the acceptance procedure shall be deemed to have been completed two weeks after notification that the goods or services are ready for the acceptance procedure.

4. Unless agreement has been made to the contrary, we shall determine the type and scope of packaging. Single use packaging must be disposed of by the Customer.

5. If the goods are shipped in loaned packaging, the packaging must be returned free of charge within 30 days of receiving the shipment. The Customer must pay compensation for any loss or damage to the loaned packaging.

Loaned packaging must not be used for any other purposes or for holding other goods. They may only be used for transporting the supplied goods. Labels on loaned packaging must not be removed.

6. In the event of the consignment being damaged or lost en route, the Customer should carry out an inspection immediately and notify us of the results. Claims relating to any transport damage must be made without delay to the forwarder by the Customer.

#### **§ 11 Duty to inspect and complain**

1. The Customer must inspect the goods or services immediately after delivery for signs of obvious defects and transport damage and notify us of any defects and damages it identifies immediately after their discovery. If a defect is identified at a later time on the goods or services, the Customer must also notify us without delay of its discovery. Otherwise the goods or services shall be deemed to have been approved in relation to this defect.

Complaints must be made in writing. A complaint in text form, for example by email, shall be inadequate.

2. Defective goods or services must not be used. If it was not possible to detect a defect on receipt of the goods or after the provision of the service, all further use of the goods or services must be stopped immediately after the discovery of the defect.

3. The Customer shall provide us with sufficient time to inspect the defect. In the event of unjustified complaints, we reserve the right to charge the Customer with the inspection costs we have incurred.

4. The complaint shall not exempt the Customer from its duty to comply with its payment obligations.

#### **§ 12 Warranty**

1. If our goods or services have a defect at the time of the transfer of risk, we shall be entitled at our discretion to rectify the defect, supply replacement goods or provide the Customer with a credit note within a reasonable period of time.

Only in urgent cases of endangering operational safety or preventing disproportionately major damage shall the Customer be entitled, if it has notified us without delay and we have refused to provide refulfilment within the short deadline specified by it, to rectify the defect itself or have it rectified by third parties and demand compensation from us of the costs incurred as a result.

2. In the event that the goods are outsourced products or outsourced products are installed or otherwise used in our products, we shall be entitled to limit our liability initially to the assignment of warranty claims which we are due from the supplier of the outsourced products unless satisfaction from the assignment right fails or the assigned claim cannot be enforced for other

reasons. In this case the Customer shall be entitled to the rights set out in Paragraph 1 above.

3. Claims by the Customer relating to the costs required for the purposes of repeat fulfilment, in particular transport, travelling, labour and material costs shall not be permitted if these costs are increased because the goods or services were subsequently transported to a place other than the Customer's site.

4. The same warranty provisions shall apply to replacement services and refinished goods as for the goods or services supplied originally.

5. Replaced parts shall become our property.

#### **§ 13 Deficiencies in Title**

1. Orders based on drawings, sketches or other information given to us shall be executed at the risk of the Customer. If we infringe third-party intellectual property rights as a result of the execution of such orders, the Customer shall hold us harmless of all claims of the holders of these rights. The Customer shall bear all further costs and losses.

2. Our liability for any infringement of intellectual property rights which relate to the use of the goods or services or to the connection or use of the goods or services with other products shall be excluded.

3. In the event of deficiencies in title, we shall be entitled, at our discretion:

- To obtain the required licences relating to the infringed intellectual property rights

- or to rectify the deficiencies of the goods or services by providing goods or services which have been modified to an extent which is reasonable for the Customer to accept.

4. Our liability for the infringement of third-party intellectual property rights shall only extend to such intellectual property rights which have been registered and published in Germany.

#### **§ 14 Liability**

1. We shall only accept liability for the outstanding accounts of the company up to the value of the company's assets.

2. In the event of simple negligence we shall only accept liability for a breach of a major contract duty. For gross negligence we shall also accept liability for breaches of non-major contract duties.

In the above cases liability shall be limited to the foreseeable damages which are typical for these contracts.

3. In the event of assured properties, our liability shall be limited to the scope and the amount of our product liability insurance policy. The scope of coverage corresponds to the recommendations issued by the Gesamtverband der Deutschen Versicherungswirtschaft (German Insurance Association). The level of coverage for the claims covered in the insurance policy shall be EUR 2 million per insurance year.

4. Compensation claims due to a malicious breach of contract duties by us, claims for bodily injury and claims under the Product Liability Law shall be subject to the statutory regulations.

5. For claims in tort we shall be liable in accordance with contractual liability; restrictive liability agreements from the contract shall also apply for dealings with the Customer.

6. Any further liability for compensation other than as provided above shall be excluded.

7. Recourse claims on the part of the Customer against us shall only exist as long as the Customer has not made any agreements with its clients which go beyond the statutory defect and compensation claims.

8. Our liability shall be excluded if the Customer has effectively limited its liability to its own clients.

9. If our liability is excluded or limited, this shall also apply to the personal liability of our employees, workers, staff, representatives, agents and vicarious agents.

10. If liability is excluded or limited under the provisions set out above, the Customer also undertakes to hold us harmless from claims by third parties.

11. The statutory provisions shall otherwise apply.

12. The Customer undertakes to notify us in writing without delay of any claims lodged by third parties and to reserve our right to use all possible means of defence and settlement negotiations.

#### **§ 15 Statute of limitations**

1. The statute of limitations for claims and rights relating to defects affecting our products, services or works services and resultant damage shall be one year. The start of this statute of limitations period is based on the statutory regulations.

The above statute of limitations reduction shall not apply if the law specifies longer periods in cases pursuant to Sections 438 Para. 1 No. 2, 479 and 634 a Para. 1 No. 2 of the German Civil

Code [BGB].

2. The statute of limitations set out in number 1, sentence 1 above shall also not apply in cases of malice if we have deliberately not told you about the defect or have guaranteed a specific property, or for compensation claims due to bodily injury or loss of freedom of a person, for claims under the Product Liability Law and for a grossly negligent breach of duty.

3. Refulfilment action shall not interrupt the statute of limitations for the original provision of the service nor shall it cause the statute of limitations to restart.

#### **§ 16 Transfer of Title**

1. We reserve title to all goods and services until all our claims from our business relationship with the Customer have been settled in full.

2. If our property is processed, connected or mixed with property owned by others, we shall acquire title to the new item as set out in Section 947 of the German Civil Code.

3. If the processing, connection or mixing takes place in such a way that the third party property is regarded as the main item, we shall acquire title as a proportion of the value of our goods or services to the other goods or services at the time of the processing, connection or mixing.

4. If we acquire title to an item as a result of our goods or services, we shall reserve title to this item until all our outstanding claims from our business relationship with the Customer have been settled in full.

5. The Customer undertakes to keep the reservation of title goods safely and, if necessary, to complete any servicing and maintenance work at its expense promptly. The Customer must insure the reservation of title goods at its own expense against loss and damage. Any security claims accrued in the event of damage must be assigned to us.

6. The Customer shall be entitled to resell the item which is our (joint) property as part of its normal business as long as it fulfils its duties from its business relationship with us. In this event a proportion of the claim resulting from the sale shall be assigned to us to cover the value of the reservation of title services provided by us to the total value of the sold goods. The Customer shall retain entitlement to collect this claim even after this assignment. Our authority to collect these claims ourselves shall not be affected.

7. The right on the part of the Customer to dispose of the goods subject to our reservation of title and to collect the claims assigned to us shall become null and void as soon as the Customer fails to meet its payment duties or an application is made to open insolvency proceedings against its assets. In the above cases and in the event of any other action by the Customer in breach of the contract, we shall be entitled to take back any goods supplied with reservation of title without notice.

8. The Customer shall notify us without delay if there are any risks to our reservation of title goods, particularly in the event of insolvency and enforcement action. At our request the Customer must provide all the required information about the goods which are our (joint) property and about the claims assigned to us and must notify its clients of said assignment. The Customer shall provide us with support in all action required to protect our (joint) property and shall pay the costs of any such action.

9. We shall have a right of seizure for all the Customer's goods which are in our possession due to the contract to cover all our claims from the contract. This right of seizure may also be used for claims from goods or services supplied earlier if they are linked to the goods or services in question.

The right of lien shall apply to other claims from our business relationship as long as they are undisputed or have been fixed by a court of law. Sections 1204 ff. of the German Civil Code and Section 50 Para. 1 of the German Insolvency Regulation shall apply as and where appropriate.

10. If the realisable value of the securities exceeds our claims by more than 15%, we shall release securities covering the excess value at our discretion at the request of the Customer.

#### **§ 17 Confidentiality**

1. The Customer undertakes to treat all aspects of the business relationship which require protection in confidence. In particular, it shall treat all commercial and technical details which are not part of the public domain and which come to its attention as a result of the business relationship as confidential. Information or aspects of the business relationship which were already part of the public domain at the time of their disclosure shall not come under the confidentiality obligation nor shall information or aspects of the business relationship for which the party to the con-

tract can provide evidence to the effect that it already knew the information before the disclosure of it by us.

The Customer shall ensure that its personnel shall also be subjected to appropriate confidentiality agreements.

2. We reserve all title rights and copyrights to supplied illustrations, drawings, calculations, samples, estimates and other (technical) documents and information.

3. The documents provided to the Customer may only be copied if required for operational requirements and in accordance with copyright regulations.

All documents may not be disclosed to third parties in full or in part or used for purposes other than those for which they were supplied to the Customer without our written consent.

4. The disclosure even in part of the business relationship with us to third parties shall only be possible with our prior written consent; the Customer shall subject the third parties to a confidentiality agreement of the same type and scope.

5. The Customer may only advertise its business relationship with us with our prior written consent.

6. The Customer undertakes to maintain this confidentiality even after the end of the business relationship.

#### **§ 18 Production equipment**

1. If special production equipment such as samples, tools and templates are required to complete the order, unless otherwise agreed we shall become and remain the owner of the production equipment manufactured by us or by a third party engaged by us even if the Customer has paid part of the costs of the equipment.

2. If expressly agreed, the production equipment shall only be used for orders placed by the Customer as long as the Customer meets its payment and acceptance undertakings. We shall only be obliged to maintain and replace this equipment free of charge if such action is required to fulfil a production quantity which has been guaranteed to the Customer. An undertaking to store the equipment shall expire two years after the last delivery of parts made using the equipment and after prior notification of the Customer.

3. Manufacturing costs for the production equipment shall be invoiced separately from the goods to be supplied unless otherwise agreed. This shall also apply to tools which must be replaced as a result of wear.

The share of the equipment costs shall be shown separately in the quotation and in the order confirmation; they shall be payable on a net basis when the contract is concluded. In addition, information should be provided therein whether and how any shares of the equipment costs that have been paid will be amortised.

4. If it has been agreed that the Customer shall become the owner of the equipment, title to the equipment shall pass to the Customer after the purchase price for the equipment has been paid. The handover of the equipment to the Customer shall be replaced by our duty of safekeeping for the equipment. Regardless of the statutory claim for the equipment to be handed over to it and of the service life of the equipment, we shall be entitled to maintain sole possession of the equipment until the acceptance of an agreed minimum quantity by the Customer or until after the elapse of a certain period of time. We shall mark the equipment as the property of a third party and insure it at the request of the Customer and at its expense.

5. Design and calculation documents, production instructions and any type of documentation shall remain our possessions and shall not be included in any duty to surrender equipment and documents.

6. If the Customer suspends or terminates the collaboration during the manufacturing period for the production equipment, all manufacturing costs incurred to date shall be charged to it unless we are responsible for such termination.

7. If the Customer's own equipment as described in paragraph 4 is used or if the Customer provides the equipment on a loan basis, our liability relating to the safekeeping and care of the equipment shall be limited to the same duty of care as would apply if we owned the equipment. The costs of maintenance and insurance shall be paid by the Customer. Our duties set out in this paragraph shall become null and void if, after the completion of the order, a request is sent to the Customer to collect the tools and the Customer fails to collect them within 14 days of the request being made.

8. If the Customer fails to meet its contract obligations in full, we shall be entitled to exercise a right of retention to the equipment. Our statutory seizure rights shall not be affected by this.

#### **§ 19 Risk of suitability for export and import**

If the export of ordered products has not been agreed by us, we shall not be under any obligation to check whether the products

supplied by us require an export licence.

The risk of whether the ordered products may be exported or imported shall be borne by the Customer. It is the duty of the Customer to check this, for example by means of an inquiry to the Federal Office of Economics and Export Control (BAFA) in Eschborn near Frankfurt am Main.

## II. Machinery and plant

The following provisions shall take priority for the delivery of machinery or plant, parts or accessories.

### § 1 Prices, deposit

1. Unless otherwise agreed our prices shall be "ex-works", including loading at the plant, excluding value-added tax, packaging, freight, duties, insurance, unloading, installation and bank charges. These items shall be invoiced separately.

2. The Customer must pay a deposit in the amount of one-third of the agreed price on receipt of the order confirmation and one-third after receiving notification that the main components of the goods are ready for shipment.

The payment of the remainder must take place within 30 days of receipt of the final invoice.

### § 2 Security

We shall be entitled to demand security in the amount of the outstanding order total at the time that the security is demanded.

The security shall take the form of an unconditional, irrevocable directly liable guarantee which is not limited by time and for which the plea of unexhausted remedies has been waived, issued by a financial institution or credit insurer based in the EU.

If the security is not provided promptly, we shall be entitled to refuse to carry out the work or to cancel the contract.

In the event that the contract is cancelled, we shall be due the agreed remuneration minus the expenses we have saved as a result of the contract being cancelled. It is assumed that under this provision 5% of the remuneration for the part of the work we have not yet completed shall be payable to us unless we provide evidence that we suffered greater damages or the Customer provides evidence that our actual damages were lower.

### § 3 Acceptance procedure

1. At our request a formal acceptance procedure shall take place after our notification of completion.

2. Representatives of both parties to the contract must prepare a signed defects log during this process which must contain details of all the defects for which the Customer reserves the right to claim.

3. The acceptance procedure may only be refused if major defects have been identified.

## III. Contract services

The following provisions shall take priority for contract services.

### § 1 Installation work

1. Unless otherwise agreed, installation work shall be payable separately.

This work shall be invoiced on the basis of time and other expenditure at the invoicing rates agreed when the order was placed. The agreed price shall be exclusive of value-added tax. This shall also be payable at the statutory rate.

2. The materials required for the installation work shall be invoiced on the basis of the actual quantity required at the prices in force when the installation work is carried out.

3. Installation work shall generally be invoiced after the acceptance procedure. However, we shall be entitled to demand reasonable weekly or monthly payments corresponding to the progress of the installation work.

If the installation work is interrupted at the behest of the Customer for a not inconsiderable period of time, we may invoice the installation work carried out up to that point.

4. Invoices shall be payable immediately on receipt on a strictly net basis.

5. The Customer must certify the work completed at the request of our fitters at least once per week but at the latest after the completion of the installation work on the activity reports which form the basis for our invoices.

6. Our fitters shall not be entitled to make legally binding statements. Our After-Sales Department shall bear exclusive responsibility for contract execution.

### § 2 Repairs and maintenance work

1. Estimates which contain binding prices shall only be prepared by us at the express request of the Customer before the work is carried out and must be paid separately.

2. We shall strive to notify the Customer of the likely costs when the contract is concluded.

3. If it is imperative that certain costs should not be exceeded, the Customer must set an upper limit for them.

If the work cannot be completed at these conditions or if the upper limit set for us has been exceeded by more than 20%, the express consent of the Customer must be obtained for the remainder of the work to be completed.

4. If the repair work cannot be completed by us for reasons which are not our responsibility, for example if no error was found, spare parts are not available or the Customer is guilty of missing the agreed deadline, the Customer must reimburse us with the costs we have incurred and the work we have completed for the submission of an estimate.

5. We shall only reset the repaired item to its original condition if expressly requested to do so by the Customer and at its expense.

6. The work shall be completed to the state of the art.

7. The transport of the items for repair or for the preparation of an estimate to our premises and back to the Customer shall be at the Customer's expense and risk. This shall apply even in the event that no repair is carried out for the reasons set out in Number 4.

8. If requested by the Customer, the return transport services shall be insured against insurable transport risks such as theft, breakage and fire at the Customer's expense.

9. No insurance cover shall exist during the period in which the repair work is carried out at our plant. The Customer shall be responsible for maintaining its existing insurance cover for the repaired item, for example against fire, water damage, storm and machine breakage. We shall only provide insurance cover for these risks at the express wish of the Customer and at its expense.

### § 3 Customer's duty of cooperation

1. The Customer undertakes to support our employees in the completion of installation, maintenance and repair work at the Customer's plant at its own expense and to take all the required action and precautions to ensure that the work can be started immediately after the arrival of our employees and can be continued without interruption up to the acceptance procedure for the work. The Customer shall in particular take the following action to ensure that this is possible:

a) It must take all the necessary action to protect personnel and property at the site where the work is to be carried out and protect them from the harmful effects of weather as well as keep them clean.

b) It must notify our employees or their managers on site of current special safety regulations if they are relevant for them. If our employees breach these safety regulations, it must provide notification of said breach without delay and if the breach has not been stopped or is repeated, it must notify us of it without delay and discuss how to proceed with us. By agreement with us or our management on site, it shall be entitled to refuse the relevant personnel access to the site at which the work is being carried out.

c) It must provide the required number of suitable support personnel for the work being carried out and for the requisite time and instruct them to follow the instructions of our site manager.

d) The Customer must ensure that before the work is started, all the required preparations and setup work have been completed, the items concerned and other required materials and media are available and our employees have the equipment and tools available that they will need to complete the work. It shall also be responsible for ensuring that the required lighting, power and, if necessary, heating and water and the appropriate connections are available at the place where the work is to be carried out.

e) The Customer must provide our employees with suitable social areas with access to sanitary facilities for the duration of the work and dry locked rooms in which their tools can be stored.

2. If testing has been agreed, it must take all the necessary precautions and action required to adjust the item being installed, repaired or maintained and which are required for testing it.

3. If the Customer fails to comply with its duties, we shall be entitled, after having set a deadline, to carry out the action which should have been carried out by the Customer in its stead and at its expense or to cancel the order and demand compensation for the costs and damages we have incurred.

4. We shall not accept any liability for the personnel provided by

the Customer.

#### **§ 4 Acceptance procedure**

1. The Customer undertakes to complete the acceptance procedure for the service as soon as it has been notified of its completion and any testing of the assembled or repaired item has been conducted if this is included in the contract.

The Customer shall not be able to refuse acceptance on the basis of a minor defect.

2. If the acceptance is delayed through no fault of ours, the acceptance procedure shall be deemed to have been completed two weeks after notification was given that the service has been completed.

3. The acceptance procedure shall end our liability for obvious defects unless the Customer has reserved the right to claim a specific defect.

4. If the installation work proves not to comply with the contract, we shall have a duty to rectify the defect. This shall not apply if the defect is minor in terms of the Customer's interests or is based on a situation for which the Customer is responsible.

#### **§ 5 Customer's duty of compensation**

The Customer shall be liable for loss and damage of the goods produced by us as part of the work completed outside our plant and shall have a duty to compensate us in this respect if the damage or the loss was not caused by the culpability of ourselves or our employees.

### **IV. Contract production**

The following provisions shall take priority for contract production or processing.

#### **§ 1 Customer-provided materials**

1. The goods for processing provided by the Customer shall only be inspected for defects and damage which are externally visible when we receive them. We shall not be obliged to conduct any other inspections. Any defects or damage found will be reported to the Customer within 10 working days of their discovery.

2. The Customer-provided goods supplied to us must be made of material with standard properties which is suitable for processing, be true to size if they have already been processed and have dimensions, particularly in boreholes, which mean that they are easy to clamp and process using standard procedures.

If these requirements are not satisfied, we shall notify the Customer of the additional work required and the resulting increase in price.

If the Customer does not agree to the change in price, it shall be entitled to cancel the contract. This cancellation must be made immediately upon receipt of our notification about the changed circumstances. If the Customer decides to cancel the contract, it must make reasonable payment for the work already completed.

3. The production and preparation of special clamping equipment shall be charged separately.

4. If the material supplied by the Customer is unusable as a result of material flaws, we must be reimbursed with the processing costs we have incurred.

#### **§ 2 Liability**

1. We shall not be liable for damage caused by inaccurate wording and identifiers on the goods supplied by the Customer.

2. In addition, we shall not accept liability for damages caused by defective material supplied by the Customer if we were unable to detect the defects in our receiving inspection conducted as set out in Section 1, Number 1.

3. If we manufacture goods on the basis of a drawing supplied by the Customer, we shall only accept liability for the manufacturing process on the basis of said drawing.

4. The Customer undertakes to reimburse us with all costs and damages, including loss of profit, which we incur as a result of our being supplied with material which is not suitable for processing.

5. We shall not make any compensation for waste incurred up to the level which is accepted as standard in the industry.

### **V. Concluding provisions**

#### **§ 1 Place of jurisdiction and applicable law**

1. The place of jurisdiction shall be our registered office or the Customer's place of jurisdiction at our discretion.

2. The laws of the Federal Republic of Germany shall be exclusively applicable to our business relationships with the Customer. The applicability of the CISG "United Nations Convention on Contracts for the International Sale of Goods" shall be excluded.

3. If individual parts of these general terms of business are invalid, this shall not affect the validity of the other provisions. The parties to the contract shall make every effort to replace the invalid provision with another provision which comes as close as possible to the commercial aim and legal sense of the original formulation and complies with the relevant statutory regulation.

4. We shall be entitled to process data in accordance with the German Federal Data Protection Law.

#### **§ 2 Contact data**

A.H. Meyer Maschinenfabrik GmbH  
Am Bahnhof 54  
D-27239 Twistringen

Managing Directors: Thomas Roess and Hans-Günter Roess

Phone: +49 (0) 42 43 92 88 80  
Fax: +49 (0) 42 43 92 88 71

Email: [info@ahmeyer.com](mailto:info@ahmeyer.com)  
Internet: [www.ahmeyer.com](http://www.ahmeyer.com)

Court of registration: Walsrode Local Court HRB 110032  
VAT Reg. No. DE116629601