

Decksmaschinen und Automation Vertriebs GmbH

Terms and Conditions

I. Applicability of the Terms and Conditions

These Terms and Conditions apply vis-à-vis all our customers and business partners (hereinafter: “Customers”) and in relation to all deliveries and performances which we carry out. Terms and conditions of our Customers which deviate herefrom or differing agreements made with our representatives only apply insofar as they are expressly affirmed by us in text form (Sec. 126 b German Civil Code). Our Terms and Conditions, moreover, also apply if we perform without reservation vis-à-vis the Customer even while aware of terms of conditions of the Customer which contradict or deviate from our own.

Decksmaschinen und Automation Vertriebs GmbH is referred to hereinafter either as “we”, “us” or the “Seller”.

II. Offer and Acceptance

1. The Customer's order represents a binding offer which we may accept within two weeks by sending back an order confirmation or by carrying out the work and, as it may, handing over the result or delivering the good(s). Prior offers or estimates provided by us are non-binding.
2. The contents of the contract are bindingly determined by the order confirmation and our terms and conditions. Agreements which deviate therefrom always require an express confirmation from us in text form.
3. Measures and weights indicated are merely approximate, we may deviate from the same within our usual tolerances in a manner which is conscionable to the Customer, inasmuch as these have not been expressly indicated as being binding. All documentation provided to Customer remains our property and may not be provided to third parties.
4. The scope of performance is, in cases of doubt, determined by the contents of the order confirmation and the documentation enumerated therein. Additional effort which results from errors in drafts provided by the Customer or other documentation or information shall be to the Customer's account. The Customer is not entitled to issue instructions to workers employed by us, without our consent, subsequent to the acceptance of a work order.
5. The Customer shall provide the correct measurements, weights and other characteristics, inasmuch as they are relevant for carrying out the work order, in a timely manner.

III. Prices

1. Insofar as no prices have been agreed upon in the order confirmation, the prices shall apply which are valid on the date of delivery.
2. In case of an increase in costs which causes a general increase in our prices, we are entitled to adjust our prices in the order confirmation in line with the cost increase, but at most in line with the general increase in our prices. This shall not apply in cases where we have expressly agreed upon certain prices as being binding. The prices shall apply ex works, they only encompass packaging, freight, postage, insurance and other shipping and handling costs if these have been explicitly mentioned.
3. If the Customer cancels a confirmed order in a permissible manner (e.g., with our consent or as set forth in a specifically agreed upon contractual right of cancellation), we are entitled to charge 10% of the purchase price for the processing of the order and for costs and lost profits. The Customer is permitted to demonstrate that lower or no damages resulted.

IV. Payment

1. Invoices will be transmitted by us electronically if the Customer has internet access. Otherwise, invoices will be sent in paper format by postal mail. Payment is due as soon as the invoice is received without any deductions. An agreement regarding deductions shall not apply to freight, postage, insurance or other shipping and handling costs.
2. Invoices are due immediately upon receipt. After 30 days, at the latest, the Customer shall be deemed as being in arrears, Sec. 286 subsec. 3 German Civil Code.
3. In case of extraordinary advance work, appropriate advance payment can be demanded.
4. If the performance of the payment claim is at risk due to a significant deterioration of the creditworthiness of the Customer which becomes known subsequent to the conclusion of the contract, Seller may ask for advance payment, retain possession of goods not yet delivered or cease further work. These rights may also be exercised by Seller if the Customer is in arrears with payment for deliveries which pertain to the same legal relationship.
5. In case of arrears, arrears interest shall be paid in the statutory amount. If the Customer is a merchant, we additionally are entitled to claim the arrears penalty pursuant to Sec. 288 subsec. 5 German Civil Code. Claiming additional arrears damages is not limited hereby.
6. If installment payments have been agreed upon but the Customer is in default with two consecutive installments, either entirely or partly, then the entire remaining open amount shall become immediately and automatically due, without further notification or declaration.
7. If the means of payment agreed upon with the Seller is not adhered to, in the event of arrears in payment on the part of the Customer or in case of a deterioration of the creditworthiness of the Customer, the Seller is entitled to only perform additional deliveries or work on a quid pro quo basis and in exchange for immediate payment or, at the Seller's option, upon having been provided with an adequate security. This also applies to partial deliveries and partial performances. Alternative, the Seller is entitled to revoke all contracts with the Seller with immediate effect and to call due all amounts owed to the Seller.

V. Place of Performance/Transfer of Risk/Deliver

1. Place of performance and place of payment are the seat of the Seller in Rosengarten-Klecken, inasmuch as something else is not apparent from the contract.
2. If the goods are to be shipped, the risk of loss transfers to the Customer as soon as possession of the consignment has been transferred to the person responsible for carrying out the transport. Otherwise, the risk of loss transfers to the Customer when possession of the goods is transferred to the Customer. The consignment shall only be insured if the Customer expressly wishes this. The costs of such insurance are to the Customer's account.

3. For shipments abroad, upon request, material and weight specifications will be provided by us. Within the tolerances typical for us, we reserve the right to deviations, inasmuch as we have not bindingly confirmed certain characteristics in text form. We shall not be responsible for compliance with foreign packaging and customs rules, etc. The packaging will be charged at cost and will not be accepted as a return.
4. Delivery dates are only valid if they are expressly confirmed by the Seller in text form. If the contract is concluded in written form, however, then any confirmation of a particular delivery date also requires written form. The delivery deadline begins with sending the order confirmation, but not with the provision of owed documentation, permits, releases by the Customer, nor with the receipt of any agreed-upon prepayment.
5. We are entitled to divide orders at our discretion into partial deliveries and to invoice the same separately. Such partial deliveries do not modify the overall structure of the contract and are, in particular, not a new offer, but rather a delivery within the already existing contractual relationship. If we do not provide a separate delivery date for the remaining, open partial deliveries, then these shall be performed within 28 calendar days.
6. If shipping is delayed at the request of the Customer or due to another circumstance for which it is responsible, then the warehousing costs resulting therefrom shall be to its account. In case of warehousing at our production site, we are entitled to charge 0.5% of the invoice amount per month for each month of warehousing.
7. Business interruptions – both for the business of the Seller as well as any sub-suppliers – such as, for example, strikes, war, natural catastrophes, fires, lockouts, pandemics and all other cases of force majeure, only then justify termination of the contract if it is unconscionable for the Customer to wait further, otherwise the delivery deadline shall be extended for the duration of the delay. A termination is, at the earliest, permissible four weeks following the occurrence of the foregoing described business interruption. Liability of the Seller is excluded in these cases.
8. If we are delivering to countries in the European Union, the Customer shall provide its Value Added Tax Identification Number as well as all other information required for processing (including, inter alia, a confirmation regarding transport and final destination) to us without undue delay. **In contrast to Secs. 449 subsec. 1, 431 subsec. 1, 2 German Commercial Code, it is agreed that in the context of this transport, inasmuch as it is performed and/or organized by us, our liability is not the statutory maximum amount of 8.33 Special Drawing Rights per kilogram, but rather the statutory minimum amount of 2 Special Drawing Rights per kilogram of the transported goods.**

VI. Retention of Ownership

1. The delivered goods remain the Seller's property until payment is complete. The Customer must inform us without undue delay regarding enforcement measures by third parties in the goods subject to ownership retention and it must provide us with the documents necessary to intervene; this also applies with respect to other kinds of detriments. Independently of this, the Customer must inform third parties regarding the rights pertaining to the goods.
2. The Customer is obligated to treat the goods subject to ownership retention carefully; in particular, it is obligated to insure the same at their reinstatement value against fire, water and theft at its own expense.
3. The following rule applies onto to merchants: The Customer is only entitled to further sell the goods subject to ownership retention to a third party in a course of its regular business. The Customer assigns its claims against this third party arising from the sale to the Seller. The Seller accepts the assignment herewith. At the latest, if the Customer is in arrears with payments, the Customer must communicate to the Seller the complete description of the third party as the debtor of the assigned claim.
4. If the value of the securities which benefit the Seller exceeds the value of its claims by 20% or more, the Seller shall, at the Customer's request, or at the request of a third party impacted by the oversecuring of the Seller, release securities at its option to that same extent.
5. In case of refining or processing goods delivered by and owned by Seller, the Seller shall be regarded as the manufacturer as per Sec. 950 German Civil Code and shall, at any given point, retain ownership of the end products. If third parties are involved in the refining or processing, the Seller is limited to a share of ownership in the amount of the invoice value of the goods subject to ownership retention. The ownership acquired in this way shall be treated as being subject to ownership retention.

VII. Warranties

1. Apparent defects must be reported in text form without undue delay following the receipt of the consignment by the Customer, while hidden defects, which are discovered during the warranty period, must be reported without undue delay in text form.
2. Justified and timely defect reports shall, at our option, be subject only to reperformance or redelivery. If the reperformance or, as it may be, redelivery fails, the Customer may at its option revoke the agreement or mitigate the price. This also applies if we seriously and conclusively refuse reperformance.
3. The right to revocation may not be exercised by the Customer if the breach is insignificant.
4. If the Customer has provided the initial product, Seller is only liable for the proper execution of the processing. The Customer is obligated to verify the suitability of the initial product. By confirming the work order, the Customer verifies that the aforesaid initial product is suitable for this processing. Seller is only liable for bad performance in relation to the initial product if the same is due to intent or gross negligence.
5. Deliveries by the Customer or by a third party it has engaged are not subject to any duty of inspection. This does not apply to initial products which are obviously incapable of being processed. Customer is liable for damage to the Seller's equipment which has been caused by defective initial products provided by Customer.
6. Swapping defective parts, including the work hours required for the same, shall be our responsibility. Travel costs, hotels, accommodation allowances, customs, etc., as well as transport costs shall be to Customer's account.
7. The warranty period is 12 months following the delivery of the ship/product for the ship, up to a maximum of 18 months following the issue date of the delivery slip. If damages are claimed, they must be brought to court no later than four months following the Seller's text form rejection notice. Filing in court thereafter is impermissible, unless an evidence securing proceeding has been initiated.
8. Legally relevant declarations and notices which Customer provides to Seller or to a third party must be made in text form as per

Sec. 126 a German Civil Code.

9. Legally binding guarantees are not provided to the Customer by us unless these are confirmed in text form pursuant to Sec. 126 a German Civil Code expressly vis-à-vis the Customer.

10. From the catalogue in Secs. 437, 475 German Civil Code, the Customer's claim to damages is excluded as per Sec. 437 subsec. 3 German Civil Code.

VIII. Limitation of Liability

1. Our liability for breach of contract as well as for torts is limited to intent and gross negligence. This shall not apply as it relates to damage to life, limb and health of the Customer or its agents, claims regarding the breach of cardinal duties, i.e. of duties which arise from the nature of the contract and the breach of which endangers the purpose of the contract, as well as arrears damages (Sec. 286 German Civil Code). Inasmuch as those are concerned, we are liable for every degree of fault. The liability in the case of a delay in delivery is, for each complete week of delay, subject to a flat rate arrears damage equal to 0.5% of the delivery value, but in no case more than 5% of the delivery value. Liability for violating cardinal duties is limited to the typically arising and foreseeable damages.

2. Subject to a confirmation in text form, a telephone discussion with our employees is non-binding and without any warranty, either in terms of the contents discussed or otherwise. In every case, for such information, consultations, etc., the limitation of liability in the foregoing Clause 1 shall apply.

IX. Returns

1. In addition to the determinations in Section III, Clause 3, Customers may, with our express permission, revoke a contract within 45 days of the issue date of a delivery slip in exchange for payment of a cancellation fee equal to 20% of the amount of the order value. Following the lapsing of this 45 day deadline, Customers may, within a further 45 days, and with our express permission, pay a cancellation fee equal to 40% of the order value and may revoke said contract. Due to the administrative overhead, a further cancellation fee equal to 20,00 EUR will be assessed. After 90 days after the issue date of the delivery slip, it is in any case impermissible to revoke said contract.

2. If the delivered good(s) are a custom order performed by us, revocation under the terms described is likewise impermissible.

3. The Customer is obligated, in case of a revocation, to send the goods back to us at his expense. The difference between the cancellation fees and the order value shall, following receipt of the goods in undamaged form, be issued as a credit to the Customer vis-à-vis the relevant goods.

X. Time Bar

1. Our claims to payment are time barred in five years, which deviates from Sec. 195 German Civil Code. Regarding the start of the time bar calculation, Sec. 199 German Civil Code shall apply.

2. The guarantee time shall, in case of delivery of used items, be one year and it begins with the delivery of the goods or the manufacturing of the product. Inasmuch as damages are concerned which do not relate to life, limb or health of the Customer or its agents, or for light negligence is not excluded, such claims are time barred within one year beginning with the claim arising.

3. The subsequent rule only applies to consumers: Claims due to defects are time barred one year from the delivery of the goods or manufacturing of the product. This shall not apply if we have caused the damage intentionally or grossly negligently or if we have damaged the life, limb or health of the consumer.

XI. Offset/Assignment/Right of Retention

1. Offsetting against our claim is impermissible unless the Customer's claim is undisputed, legally bindingly affirmed or not linked to our claim in a *quid pro quo* relationship (synallagma).

2. It is impermissible for the Customer to assign counter-claims to third parties, unless there is no valid interest on our part vis-à-vis this prohibition of assignment or the valid interests of the Customer as it relates to assignability of the claim outweigh our countervailing interests.

3. The Customer may not exercise a right of retention using counter-claims, including such arising from previous or ongoing transactions, as it relates to its own performance.

XII. Forum/Applicable Law

1. The exclusive venue for all disputes arising out of or in connection with the disputed contractual relationship are the state courts of the Free and Hanseatic City of Hamburg.

2. For cross-border deliveries, the exclusive venue for all disputes arising out of or in connection with the disputed contractual relationship shall be the state courts of the Free and Hanseatic City of Hamburg (Art. 17 of the European Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters).

3. This contractual relationship is subject to the laws of the Federal Republic of Germany. UN CISG is excluded. Subsidiarily to these terms and conditions, Incoterms shall apply, insofar as they have been agreed upon, in their most current version.

4. The English translation of these terms and conditions is a reading aid only, the German version of these terms and conditions, which are available on the Seller's website, are the sole legally binding and valid version.

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