

General Terms and Conditions for Sales, Deliveries, and Repairs
of Maschinenfabrik Herbert Meyer GmbH, Herbert-Meyer-Str. 1, 92444 RötZ
(for commercial business transactions and for entities organized under public law
and
public law special funds within the meaning of § 310 subsection (1) BGB (German Civil Code))
valid as of January 2018

§ 1 General

1) The following Terms and Conditions for Sales, Deliveries, and Repairs apply to all business transactions to the extent they have not been explicitly modified or excluded by written contract. Any prior, possibly, contradictory terms and conditions are hereby invalid.
2) Our terms and conditions apply exclusively; we only acknowledge a customer's terms and conditions that are contrary hereto when we acknowledge their applicability explicitly and in writing. Our following terms and conditions also apply even when we make a delivery to a customer with knowledge of their contradictory or deviating terms and conditions without reservation.
3) Our terms and conditions for sales, deliveries, and repairs also apply to all future business transactions with the customer.

§ 2 Offer and Order

1) Our offers are generally non-binding to the extent there has not been an explicit agreement that they are binding.
2) To the extent an order is viewed as an offer pursuant to § 145 BGB (German Civil Code), we can accept it within 2 weeks.
3) We reserve all property rights and copyrights regarding all cost estimates, drawings, and other documents in the context of offers made by us. They cannot be made accessible to third parties without our explicit written approval. Violations create an obligation of total damage compensation. In addition, in the event of a violation we are entitled to immediately withdraw from the contract. Drawings and other documents that are part of the offer shall be promptly returned or paid for upon request or if the order has not been placed with us, whereby the amount of compensation will be determined by us in accordance with an economic and low-cost estimate.
4) Orders placed with us are first binding upon us when they have been confirmed by us in writing or by fax. This also applies to those orders that are accepted by our representatives. The scope of our contractual performance is solely assessed by this order confirmation. Once preparation work has begun, orders that have been confirmed by us can only be changed when the resulting costs are charged. We will implement minor deviations in construction and performance that we view as necessary without obtaining the purchaser's agreement.
5) Oral supplementary agreements or arrangements with us or our representatives are ineffective.

§ 3 Prices and Payment Conditions

1) All prices are effective ex works RötZ, including loading, however excluding packaging, transportation, value added tax (the value added tax effective on the day of billing will be calculated), installation, insurance, and any special taxes that may accrue. We reserve the right to change our prices accordingly if cost reductions or cost increases arise after the conclusion of the contract, particularly based upon wage agreements or changes in the price of materials. We shall provide proof of these costs at the customer's request.
2) Packaging shall be charged separately. Upon the freight prepaid, undamaged return of boxes and crates, 60% of the packaging costs shall be reimbursed on account.
3) Payment shall take place as set forth in our order confirmation. Otherwise, the net purchase price (without discounts) is due for payment within 30 days of the invoice date. Payment by bank draft requires special agreement; in this case all taxes, costs, and expenses shall be borne by the customer.
4) Deduction of a discount is only permissible upon written special agreement.
5) If the customer is overdue in making payment, we are entitled to demand default interest in the amount of 8 percentage points above the base interest rate pursuant to § 247 BGB (German Civil Code). The base interest rate can be retrieved at www.bundesbank.de. We reserve the right to assert higher damages caused by late payment.
6) If the purchaser is late with payment that is due or the provision of a payment surrogate (*inter alia*, bank draft, check) or if a significant deterioration in its financial situation arises to such an extent that it requests implementation of an out-of-court settlement or that fruitless enforcement measures, draft or check protests, or similar circumstances exist, we can demand cash payment upon the delivery of goods for outstanding deliveries based upon open contracts with cancellation of the payment period agreed upon under other circumstances.
7) The customer can only set-off those claims that are undisputed, acknowledged by us, or that have been finally legally established. Otherwise, it only has retention authorization to the extent of its counter-claims arising from the same contractual relationship. The customer also does not have a right of retention based on disputed claims.

§ 4 Periods for Delivery or Performance

1) Our information regarding delivery times, which are expressly designated as non-binding, are made according to best estimates subject to correct and timely delivery to us by the manufacturer and after clarification of all technical questions.
2) The delivery period begins upon sending the order confirmation, however, not prior to the customer providing the necessary documentation, as well as not prior to receipt of the agreed upon down payment.
3) If non-adherence to the delivery or performance period is proven to be due to mobilization, war, rebellion, strike, lockout, malfunctions for which we are not responsible, including our suppliers, or to unforeseen obstacles arising that are outside of our control, the period shall be reasonably extended notwithstanding our rights in § 9 subsection 3). We are also not responsible for the circumstances listed above if they arise during an already existing delay. We shall inform the customer as quickly as possible of the beginning and end of such obstacles in important cases.
4) The delivery period has been met when, by its expiration, the delivered goods have left the factory in the case of pick-up or when notification has been made that the goods are ready for shipping/delivery in the case of shipping/delivery.
5) Our liability is in accordance with statutory provisions to the extent the delivery delay relates to an intentional or grossly negligent breach of contract for which we can be held responsible; fault on the part of our representatives or agents shall be attributable to us. To the extent the delivery delay does not relate to an intentional breach of contract for which we can be held responsible, our liability for damage compensation is limited to foreseeable, typically occurring damages. We are also liable pursuant to statutory provisions insofar as the delivery delay for which we can be held responsible relates to a culpable breach of a fundamental contractual duty. In such a case, liability for damage compensation is limited to foreseeable, typically occurring damages.
6) Otherwise, in the case of delivery delay we are liable for each completed week of delay with a lump-sum compensation for delay in the amount of ½ percent; however, up to a maximum of 5 percent of the value of the total shipment or that portion of the total shipment that cannot be used timely or according to the contract as a result of the delay.
7) If the shipment/delivery is delayed at the wish of the customer, beginning one month after announcement of readiness for shipping/delivery, the customer shall be charged the costs arising from the warehousing, upon warehousing at our factory, however, at least ½ percent of the invoice amount for each month.
After the expiration of a reasonable deadline, we are entitled to otherwise dispose of the goods and proceed with delivery to the customer within a reasonable, extended deadline.
8) Compliance with the delivery deadline requires that the customer fulfills its contractual obligations.

§ 5 Passing of Risk

1) Risk passes to the customer as soon as the operational consignment is delivered or picked up. If the proper delivery arranged for by us is delayed for reasons that are within the customer's area, the risk passes to the customer from the point in time that the delay arose. In the case of delivery, when necessary, we shall take out transport insurance as to the goods to be delivered; the costs for this shall be charged to the customer.
2) The goods delivered by us shall be immediately inspected for transportation damage upon arrival. In the event of damage, a damage report must be filed with the shipping, rail, or postal service company. Complaints in this regard can be taken into account only 10 days after receipt of the goods by the customer.

§ 6 Reservation of Title

1) The delivered goods remain our property without reservation until full payment of all of our claims, including any claims arising in the future from the business relationship with the customer. Upon payment by check or bank draft, payment takes place on the day it is cashed.
2) The customer is obliged to treat the purchased goods with care; in particular, it is obliged to sufficiently insure them for replacement value at its own expense against fire and water damage and theft. To the extent maintenance work is necessary, the customer must timely conduct this at its own expense.

3) The goods that are subject to the reservation of title can only be resold by the customer within the context of its normal business operations. It shall not otherwise make a gift of the goods, or loan, mortgage, or transfer ownership thereof as security.
In the event of effective resale prior to payment of the purchase price, the purchaser now hereby assigns all claims in the amount of the gross total (incl. VAT) of our claim, which accrued to him based upon the resale against his customer or third party.
In the event of repair work on our part on machines delivered by us, the customer now hereby assigns to us customer claims to customers beginning with the letters a through e that exist at the time of the repair order in the amount of the gross invoice total (incl. VAT) of our claims.
We hereby accept this assignment. Even after the assignment the customer remains authorized to collect these claims. Upon request, we shall be notified of the claims assigned to us. We have the right to directly collect these assigned claims. We will not exercise this right as long as the customer fulfills its payment obligations and, in particular, no application for the opening of bankruptcy proceedings is made. If this is the case, we can demand that the customer notify us of the assigned claims and their debtors, provide all necessary information for collection, give us the documents relating thereto, and notify the creditors of the assignment.
4) In the case of a levy of execution, the customer obligates itself to reference that the object is not its property and shall immediately inform us of the levy of execution in writing.
5) The costs for interventions on our part based upon the assertion of the reservation of title shall be borne by the customer to the extent they are not assumed by third parties.

§ 7 Liability for Defects

1) The customer's rights regarding defects require that it properly fulfills its duties of examination and notification pursuant to § 377 HGB (German Commercial Code).
2) The period of limitation for claims of defects is 12 months from the passing of the risk.
3) Insofar as the equipment is deficient, we shall be entitled at our discretion, subject to timely notification of defects, to supplementary performance in terms of a removal of defects or delivery of a new defect-free one. In case of removal of defects, we are obliged to bear all the expenses for parts and working time of MEYER Service technician/s. Transport, traveling, accommodation as well as allowance have to be borne by the customer.
4) If the subsequent performance is unsuccessful, the customer can withdraw from the contract or reduce the consideration.
5) There is no claim of defect as to only insignificant deviation from the agreed condition, as to only insignificant diminution of usability, as to natural wear and tear, nor for damages after the risk has passed resulting from incorrect or careless treatment, excessive work load, unsuitable resources, or on the basis of certain outside influences which are not assumed under the contract. If professional maintenance work or modifications are performed by the customer or third parties, there is no claim for damages as to this or the consequences thereof.
6) We are liable pursuant to the statutory provisions to the extent the customer asserts damage compensation claims based on intent or gross negligence, including in regard to our representatives and agents. To the extent we are not accused of intentional breach of contract, damage liability is limited to foreseeable, typically occurring damages.
We are liable pursuant to the statutory provisions to the extent we culpably breach a fundamental contractual obligation. In this case damage compensation is limited to foreseeable, typically occurring damages.

To the extent the customer has a claim for damage compensation instead of performance, our liability is limited to compensation for foreseeable, typically occurring damages.
Liability for culpable injury to life, limb, and health remains unaffected hereby. This also applies to compulsory liability pursuant to the Product Liability Act.

To the extent the above does not otherwise govern, liability is excluded.
7) As to machines or the significant parts of machines that we receive from others, our liability for defects is limited to the assignment of warranty claims that we have against the third party as supplier. Our liability for warranty claims only arises secondarily when it can be proved that the assertion of warranty claims against the third party is impossible.
For the assertion of such warranty claims, we shall provide information and make documentation available at any time.

8) We do not assume any liability for consumable materials such as rubber parts, plugs, sockets, cables, and other consumable parts such as Teflon belts, conveyor belts, and textile covers. As to warranty claims regarding such consumable parts, the customer has the burden of proof.

§ 8 Total Liability

1) Any further liability for damage compensation than that provided for in § 7 shall be excluded – regardless of the legal nature of the asserted claim. This particularly applies to claims for damage compensation arising from *culpa in contrahendo*, based upon other breaches of obligations, or based upon tort claims for the compensation of property damage pursuant to § 823 BGB (German Civil Code).
2) The limitation under subsection 1) also applies to the extent the customer demands performance instead of damage compensation and instead of this, claims useless expenditure.
3) To the extent liability vis-à-vis us is excluded, this shall also apply with regard to personal liability for damages of our employees, representatives and agents.

§ 9 Withdrawal

1) In the event of a deterioration of the customer's financial situation after the conclusion of the contract, such as an application for the opening of bankruptcy proceedings, a request for implementation of an out-of-court settlement, fruitless enforcement measures, bank draft or check protests, or similar circumstances in regard to the customer, we are entitled to withdrawal.
In addition, we have a claim for damages. This compensation encompasses lost profits, expenses we have incurred in the context of the withdrawal from each contract, and any reduction in value of the delivered objects that may have arisen. Moreover, in the event of withdrawal we can demand the immediate return of the delivered objects.
2) In the event the customer is behind in its payments within the meaning of § 3 of these terms and conditions, after a reasonable subsequent deadline we are also entitled to withdrawal.
In addition, we also have a claim for damages. § 9 subsection 1) sentence 3 of these terms and conditions shall apply accordingly.
3) In the event of unforeseen obstacles within the meaning of § 4 subsection 3), insofar as conformance of the contract is not economically viable we have the right of withdrawal.
4) In the event of impossibility of delivery for which we are responsible, the customer's claims for damages are limited to a maximum of 5 percent of the value of the agreed delivery. However, these damage claims only exist to the extent proven damage occurs as a consequence of the impossibility.
5) In the event of impediments arising out of applicable national or international foreign trade and customs requirements or embargoes or other sanctions, we are entitled to withdrawal. Purchaser is not entitled to claim damages.

§ 10 Purchase on a Trial Basis

The purchaser may only return delivered goods that have been purchased on a trial basis within the agreed trial deadline when the delivered goods do not perform as set forth in the brochure or do not have the agreed condition.

§ 11 Drawings and Descriptions

These are as exact as possible, however, non-binding. We reserve the right to make amendments.

§ 12 Export control

The export of specific goods, information, software, documentation, and other data can, due to its nature, its intended use or its country of destination, be subject to authorization requirement. The user shall for the goods, information, software, documentation, and other data adhere strictly the export regulations of the EU and the Federal Republic of Germany, and the export control laws of the U.S.A.

§ 13 Jurisdiction and Place of Performance

To the extent the customer is a commercial entity, the place of jurisdiction is Regensburg, Germany. However, we are entitled to sue the customer at its place of residence. This also applies to matters regarding checks and bank drafts.

To the extent the order confirmation does not otherwise provide, our place of business is the place of performance for both parties.

§ 14 Savings Clause

If a provision of these General Terms and Conditions for Sales, Deliveries, and Repairs are or become ineffective in whole or in part, the applicability of the remaining provisions and the contract are not affected thereby. In this event, the statutory rule shall take the place of the invalid provision.