

General Terms and Conditions

August Strecker GmbH & Co. KG

Elektro-Schweissmaschinen-Fabrik

I. General, Scope of Application

- (1) All goods and services are subject to these terms and conditions, as well as to any separate contractual agreements. Any deviating purchasing terms and conditions of the ordering party / purchasing party shall not become part of the terms of this contract, even in the event that we accept an order and even if we do not expressly object to said deviating purchasing terms and conditions. A contract is entered into – in the absence of special agreements – with a written order confirmation on our behalf. These terms and conditions shall also apply to all future business transactions, even if we do not expressly invoke them in the future.
- (2) We reserve all proprietary rights and copyrights to samples, cost estimates, drawings, and all other similar tangible and intangible information –including information in electronic format–. This information may not be made accessible to third parties. We hereby agree to make information and documents designated as confidential by the ordering party / purchasing party available to third parties only after receiving authorization from said ordering party / purchasing party.
- (3) We will refer to ourselves as "seller," "contractor," or "supplier" hereafter. Our contractual counterpart will be referred to as "purchasing party" or "ordering party" hereafter.

II. Quotations

- (1) All quotations are, unless open for a limited period, subject to change and non-binding. The purchasing party must object to our confirmations, especially fax confirmations, within two weeks of receipt at the latest, provided there is a reason for said objection. If a confirmation from the supplier is not objected to within said time limit, its contents shall be considered as agreed upon.
- (2) We shall be entitled to withdraw from the contract or to claim compensation for non-performance if the purchasing party's financial situation, unbeknownst to us and without a grossly negligent lack of knowledge thereof on our behalf, was already adverse at the time that the contract was entered into and the corresponding purchase price payment obligation was or is not otherwise secured or if the purchasing party's financial situation worsens significantly during the duration of the contract and payment for due items is not made as agreed. The exact deliveries for which said arrears are accrued shall make no difference in terms of this provision. All accounts receivable shall be due immediately in either case. Furthermore, we shall be entitled to perform any outstanding deliveries only against advance payment and by way of security.
- (3) Our statements regarding machine-tool efficiencies within defined periods represent information based on the previous experience of the supplier, but do not constitute quality agreements of any kind. Furthermore, the contract considers the intended use of the deliverable as consisting of one-shift operations with fully appropriate operation and maintenance and conventional use as required.

III. Delivery

- (1) Our written order confirmation shall be decisive in terms of the scope and performance of deliveries and other services. Subsidiary agreements and modifications require our written confirmation in order to take effect.
- (2) Safety devices that are not installed on the machine will be included with the delivery insofar as this is agreed.
- (3) Incoterms 2000 apply to international sales, provided that a corresponding clause has been agreed upon. The mutual place of performance is Limburg an der Lahn, Germany.

IV. Prices and Payment

- (1) Our prices are specified in euros plus the corresponding value-added tax required by law and any incidental expenses. In the absence of a special agreement, our prices are calculated ex works Limburg, excluding packaging, transportation insurance, unloading, and any incidental expenses incurred.
 - (2) Regardless of the agreed price, we reserve the right to change the purchase price if the purchasing party asks that changes be made to the delivery item during the duration of the contract. This same provision shall apply in the event that the the delivery item costs for which we are responsible increase due to exchange rate fluctuations, exchange regulations, modified customs duties, or fees required by law; increased raw material costs, labour costs, transportation costs, or other material costs; or any other reasons that are beyond our control.
 - (3) In the absence of a special agreement, payment must be made ex paying agent, without any deductions, to the account of the seller, in accordance with the following provisions:
 - a) **New machines:** 1/3 upon receipt of an order confirmation, 1/3 upon receipt of a notification of readiness for shipment; the rest within 30 days of the invoice date at the latest.
 - b) **Spare parts:** Within 30 days of the invoice date, strictly net.
 - c) **Repairs:** Immediately upon receipt of the invoice, strictly net, without any deductions.
 - d) **Assembly:** Immediately upon receipt of the invoice, strictly net, without any deductions.
- If a discount is given, said discount shall be contingent on there not being an open balance, to the credit of the supplier, for the concept of prior deliveries and other services or incidental expenses. Checks shall be accepted strictly on account of performance, and credit notes shall be accepted only provided that the amount is received (payment). Bills of exchange other than checks will not be accepted.
- (4) In the event that the credit period is exceeded, we reserve the right to bill for default interest pursuant to Secs. 288 II, 247 of the German Civil Code (8% over base rate). The enforcement of claims for higher

default interest rates upon production of proof, as well as for other damages caused by default, shall be admissible. The day on which the amount is finally at our disposal shall be considered as the day of payment.

- (5) Setoffs, as well as the withholding of payments, due to any counterclaims of the ordering party that are disputed by us shall be inadmissible unless said counterclaims have become res judicata or are recognized by us.

V. Packaging

Unless otherwise expressly confirmed by us, packaging will not be taken back.

VI. Delivery Time and Delivery Date

- (1) The delivery time shall be established on the basis of the agreements between the purchasing party and us. Compliance with said delivery time by us requires for all business and technical questions to have been clarified between the contracting parties and for the ordering party to have fulfilled all its obligations, e.g., the production of any required official certificates and authorizations or the performance of a down payment. If this is not the case, the delivery time shall be extended accordingly. This shall not apply if we are responsible for the delay.
- (2) Compliance with the delivery date shall be contingent on the proper and timely availability of supplies and raw materials. We will notify our contractual partner of any expected delays as soon as we are aware of them.
- (3) The delivery date shall be considered as complied with if the delivery item has left our factory by the time the corresponding period has elapsed or if readiness for shipment has been notified. If acceptance testing is required, the acceptance testing date – unless acceptance is legitimately refused – or, alternatively, the notification of readiness for acceptance testing, shall be decisive.
- (4) If delivery item shipment or acceptance testing is delayed due to reasons for which the purchasing party is responsible, the purchasing party shall be billed for all costs incurred as a result of the delay starting one month after the shipment notification or one month after the notification of readiness for acceptance testing, as the case may be. The risk shall pass to the purchasing party on the day of the notification of readiness for shipment or of readiness for acceptance testing, as the case may be. Furthermore, we hereby agree to take out any insurance policies requested by the purchasing party at the expense of the latter.
- (5) If non-compliance with the delivery time can be traced back to force majeure, job actions, official measures, lack of electrical power, or other events lying outside our scope of influence, the delivery time shall be extended accordingly. We will notify the purchasing party of the beginning and end of said types of circumstances as soon as possible.
- (6) If any later amendments and/or additions that may affect the delivery time are made to the contract, the delivery time shall be extended accordingly. Unless otherwise agreed, we shall also be entitled to make early deliveries. Partial deliveries shall be admissible, provided that they are reasonable for the purchasing party/ordering party.

- (7) The purchasing party may withdraw from the contract without setting a time limit if complete performance prior to the transfer of risk becomes impossible for us. Furthermore, the purchasing party may withdraw from the contract if the performance of part of a delivery corresponding to an order becomes impossible and the purchasing party has a legitimate interest in refusing a partial delivery. If this is not the case, the ordering party shall pay the contractual price apportionable to the corresponding partial delivery. The same applies in the event of our inability to perform. Paragraph IX.2 applies to liability issues and claims for damages. If the impossibility of performance or our inability to perform arises during the purchasing party's default of acceptance, or if the purchasing party is fully or mostly responsible for these circumstances, the purchasing party shall remain obligated to its contractual counterperformance.

- (8) If we incur in a delay with our delivery and the purchasing party suffers damages as a result, said party shall be entitled to claim a lump sum compensation for the delay in performance. Said lump sum compensation shall be in the amount of 0.5%, for each week of delay, of the total value of the part of the total delivery that cannot be used in a timely manner or as stipulated in the contract due to the delay. This compensation, however, shall not exceed 5% of said total value. If the purchasing party sets a reasonable period for performance after the due date – under consideration of all legal exceptions – and this period is not complied with, the purchaser shall be entitled to withdraw from the contract within the scope of the applicable legal regulations. Further claims due to delays in delivery shall be governed exclusively by Paragraph IX.2. of these terms and conditions.

- (9) If a shipment is delayed upon request from the purchasing party, the purchasing party shall be billed for the monthly costs incurred due to storage – at least 0.5% of the invoice amount in the event of storage at the supplier's plant – starting with the notification of readiness for shipment. However, the supplier shall be entitled, after setting a reasonable period and after said period has expired without effect, to use the delivery item for other purposes and to supply the purchasing party with an equivalent delivery item after a correspondingly extended period of time.

VII. Shipment, Transfer of Risk, and Acceptance Testing

- (1) The delivery items shall be shipped as freight, at the expense and risk of the purchasing party or recipient, through a carrier – by air or sea if applicable or via parcel post or private parcel services for small shipments, unless special shipment instructions have been provided in writing by the ordering party.
- (2) The risk shall pass to the purchasing party once the delivery item has left the factory, including cases in which partial deliveries are made or in which we have assumed responsibility for other services, e.g., shipping costs and/or delivery and commissioning. If acceptance testing is required, said acceptance testing shall be decisive for the transfer of risk. Acceptance testing must be performed without delay on the acceptance testing date, or, alternatively, after we send a notification of readiness for acceptance testing. The ordering party may not refuse acceptance due to a non-significant defect. In any case, acceptance shall be effected through commissioning at the latest.

- (3) If shipment or acceptance testing is delayed or fails to occur due to circumstances not attributable to us, the risk shall pass to the purchasing party on the day of the shipment notification or on the day of the notification of readiness for acceptance testing, as the case may be. We hereby agree to take out any insurance policies requested by the purchasing party at the expense of the latter.

VIII. Retention of Title

- (1) We retain title to all delivery items until all our claims resulting from the corresponding business connection, including any future claims of any kind, have been fully satisfied. In the case of revolving accounts, this retention of title shall function as security for any respective balance payment claims.
- (2) While the retention of title is in force, the sale, pledging, transfer by way of security, or any other relinquishment of the delivery item without written authorization from us shall be prohibited. All claims resulting from dispositions of the delivery item by the purchasing party are hereby assigned to us by the purchasing party to the amount of the delivery price (including VAT). In the event of interventions by the purchasing party's creditors, especially in the event that the delivery item is seized by court authorities, the purchasing party shall notify us immediately by means of a registered letter and shall cover any costs incurred in order to remedy said interventions, especially in the event of intervention proceedings, if they cannot be collected by the opposing party.
- (3) We shall be entitled to take back the delivery item, and the ordering party shall be obligated to return it, in the event that the ordering party behaves in a manner contrary to the terms of the agreement, particularly in the event of a delay in payment. Due to the retention of title, we can demand for the delivery item to be given back in the event that we withdraw from the contract. A petition to open insolvency proceedings on behalf of the ordering party shall entitle us to withdraw from the contract and to demand the immediate return of the delivery item.
- (4) The purchasing party hereby agrees to insure the delivery items, including all parts stored at our plant upon request from the purchasing party, for replacement value, and at its own expense, against fire, lightning, explosions, water, and other risks, and to assign all claims for damages to us. Furthermore, the purchasing party hereby agrees to include the delivery items in its company third party liability insurance coverage and to release us from claims by third parties in this respect.
- (5) Should the purchasing party become the sole proprietor or co-proprietor of the delivery item due to the linking, mixing, processing, or machining of the delivery item, we shall be entitled to ownership in the amount that corresponds to the proportion of the delivery item (delivery prices including VAT, without deductions) to the other connected, mixed, or blended objects. Processing or machining shall be done for us pursuant to Sec. 950 of the German Civil Code, without us assuming any responsibility as a result. In the event of a conflict between this clause and those of other suppliers, processing shall be done jointly for all parties, with the respective share conforming to the proportion between the deliveries. The deposit shall be gratuitous.
- (6) If the securities due to us as a result of the retention of title exceed the value of the secured claim by more than 20%, the securities shall be considered as released in this respect.

IX. Claims Based on Defects

Our warranty covers material defects and defects in title found in the delivery as follows, to the exclusion of further claims –subject to Section X–, provided that the purchasing party fulfils its payment obligations, in which case said party may retain a reasonable sum, to be specified by us, due to the existence of defects. Furthermore, the purchasing party must fulfil its requirement to make a complaint in regard to a defect immediately upon receipt of goods, pursuant to Sec. 377 of the German Commercial Code.

Material defects

1. All parts that are defective as a result of a circumstance occurring before the transfer of risk shall be repaired free of charge or shall be replaced, free of charge, with an equivalent that is free of defects, whichever is chosen by us. The discovery of said defects must be notified to us immediately in writing. Any replaced parts will become our property.
 2. Following an agreement with us, the purchasing party shall give us the necessary time and opportunity to perform all repairs and replacements that we deem necessary; otherwise, we shall be released from liability for any resulting consequences. The purchasing party shall have the right to fix the defect by itself or through third parties and to demand a reimbursement for the required expenses only in particularly urgent cases in which an inevitable operational safety hazard is posed or in order to ward off disproportionately large damages, in which case we must be notified immediately. The purchasing party shall carry the burden of proof of said necessity in this respect.
 3. Out of the direct costs incurred as a result of the repairs or replacement, we will cover the costs for the replacement unit, provided that the complaint turns out to be legitimate.
 4. Within the scope of the applicable legal regulations, the purchasing party shall be entitled to withdraw from the contract if we allow a reasonable period for repairs or for the provision of a replacement to elapse without performing said actions –under consideration of all legal exceptions–. In any case, we shall be entitled to at least a second attempt at remedying any material defects. If the only defect found is negligible, the purchasing party shall be entitled solely to a reduction in price. The right to a reduction in price is otherwise barred.
- Further claims shall be governed by Paragraph X.2. of these terms and conditions.
5. We assume no responsibility in the event of the following: Inappropriate or improper use; faulty assembly or commissioning by the purchasing party or by third parties; natural wear and tear; faulty or negligent handling; improper operation; improper and/or incomplete maintenance; unsuitable operating equipment/fluids; excessive use; deficient construction work; an unsuitable foundation; environmental, electrical, electrochemical, or other influences and effects, e.g., aggressive media and other influences with the ability to destroy materials, provided that we are not responsible for said situations and/or circumstances.

6. We assume no liability for any consequences resulting from the purchasing party, or a third party, performing repairs in a faulty manner. The same applies to modifications to or repair work on the delivery item that are performed without our previous consent.

Defects in title

7. If the use of the delivery item causes a domestic industrial property right or copyright infringement, we will procure, for the purchasing party, the right to continue the use of said item at our expense or modify the delivery item, in a manner that is reasonable for the purchasing party, in such a way that the property right infringement ceases to exist. If this is not possible under economically reasonable conditions or within a reasonable period, the purchasing party shall be entitled to withdraw from the contract. We shall also be entitled to withdraw from the contract under the aforementioned conditions. Furthermore, we shall indemnify the purchasing party for any undisputed claims, or any claims that have become res judicata, filed by the relevant owner of the property rights.
8. Our obligations, as stipulated above in this section, are final, subject to Paragraph X.2., in the event of a property right and/or copyright infringement. Said obligations shall only exist if the purchasing party notifies us of the claimed property right and/or copyright infringement immediately; the purchasing party supports us in warding off the asserted claims or enables us to perform modifications pursuant to the preceding provision; we retain the right to all measures possible to ward off the claims, including an extrajudicial settlement; the defect in title is not the result of an instruction on behalf of the ordering party; and the infringement has not been caused due to the purchasing party changing the delivery item without authorization or using it in a manner not conforming to the contract.

X. Liability

- (1) If the delivery item cannot be used by the ordering party as stipulated in the contract due to our fault, resulting from a failure to perform or from the faulty performance of proposals and advice given before or after the contract is entered into or from a breach of other contractual collateral obligations – especially instructions for the operation and maintenance of the delivery item or with assembly work assumed by us –, the stipulations set forth in Section IX and subsequent Paragraph 2 apply accordingly, to the exclusion of further claims.
- 2) We will assume liability for damages that do not occur to the delivery item itself – irrespective of the corresponding legal grounds – only if done with intent; in the event of gross negligence on behalf of the owner or institutions or a salaried employee in a managerial position; in the event of culpable harm to life, body, and/or health; in the event that we fraudulently conceal defects; for defects that we

have guaranteed would not be present; or for delivery item defects provided that we are liable for bodily injury or property damage to privately used objects pursuant to the German Product Liability Act. In the event of a culpable breach of material contractual obligations, we will also assume liability in the event of gross negligence by salaried employees in non-managerial positions and in the event of slight negligence; in the latter case, limited to damages that are reasonably foreseeable at the time that the contract is entered into. In this respect, the reimbursement for pure financial losses, i.e., for production downtimes, reductions in production, or lost profit shall be limited by the general principle of good faith, in case of a disproportion between the amount of the delivery price and the extent of damages, for instance. Any further claims shall be excluded.

XI. Limitation of Actions

Any claims of the purchasing party – irrespective of the corresponding legal grounds – shall be subject to a limitation period of 12 months. For new machine deliveries, the period of limitation for claims based on defects shall be five years (one-shift operation) or 20 months (three-shift operation), provided that internally manufactured parts are involved. For other parts, especially purchased parts and subcontracted parts, the stipulations of sentence 1 apply, in which case we shall transfer any existing, longer warranty rights with our suppliers to the purchasing party, for example. The applicable legal periods of limitation apply to claims for damages pursuant to X. para. 2. They also apply to defects in constructions, as well as to delivery items that were used for constructions in conformity with their normal intended use and that caused said constructions to be defective.

XII. Miscellaneous Provisions

- (1) The laws of the Federal Republic of Germany apply to this contract and to all legal relations between us and the purchasing party exclusively, to the exclusion of the Uniform Law on the International Sale of Goods. This also applies in the event of shipments abroad, unless otherwise expressly agreed.
- (2) The sole place of performance and place of jurisdiction for any disputes arising from the contractual relationship shall be our company domicile, Limburg an der Lahn, Germany. However, we shall remain entitled to file a lawsuit at the principal place of business of the ordering party/purchasing party.
- (3) The invalidity of any of the preceding provisions shall not affect any part of the remaining provisions. Any invalid or void provision shall be replaced by a new provision –agreed between the parties– in such a way that the new provision corresponds to the original intended financial purpose as much as possible. If there are any omissions in this provision, the parties shall proceed accordingly.
- (4) If a right granted by these provisions is not used once or several times, this shall not be considered as a waiver thereof in the future.

Limburg/Lahn, January 2002

AUGUST STRECKER GmbH & Co. KG
Elektro-Schweissmaschinen-Fabrik