

# General Terms and Conditions for Deliveries and Services of Paul Maschinenfabrik GmbH & Co. KG

2018

## Applicable law

All deliveries and services are subject to German law, in particular to the respectively valid version of the Civil Code, Commercial Code, Copyright Act, Product Liability Law, and the EU machinery directive. However, these General Terms and Conditions and any deviating provisions laid down in our order acknowledgement shall take precedence, provided they are permissible in keeping with German law. Deviating general terms and conditions of our contractual partners or verbal agreements shall not form part of the contractual content, unless we agree to their validity in writing. The application of UN Sales Law is excluded.

## Technical execution

In all services we shall keep to the respectively applicable state of the art as a minimum.

Technical alterations and alterations in shape, colour and/or weight shall be subject to change within reason and in particular within the scope of technical improvements.

Technical documentations in German and English are included in quotations and order acknowledgements free of charge. Additional translations into other languages will be charged to the contractual party at cost.

Our products are developed and manufactured according to customer specification. Data and pictures in advertising and information material of whatever kind are not binding. The data and descriptions in our customer-specific quotations and in our order acknowledgements are exclusively relevant for the execution and condition of our products. Verbal sub-agreements and assurances of our staff or representatives shall require our written confirmation to be legally effective.

## Delivery deadlines

Delivery deadlines shall only be binding provided they are marked as such in our order acknowledgement. They shall be considered guide times, which may be exceeded by up to six weeks.

A delivery deadline agreed upon shall be extended reasonably in the event of delays for which our contractual partner is responsible, in particular in the event of payment default or delays in providing necessary technical clarification.

## Retention of title

We shall retain title to the delivery items in all legally possible forms until payment in full of all receivables arising out of a current business relationship.

Our contractual partner undertakes to treat the goods with due care and to regularly undertake necessary maintenance and inspection work at its own expense.

Our contractual partner shall be obligated to prevent access to the delivery items by third parties, e.g. through distraint, to immediately inform us of any access by third parties and to properly insure the delivery items.

In the event of an application for the institution of insolvency proceedings or of payment default of more than eight weeks, the contractual partner shall be obligated to return the delivery items.

Our contractual partner shall be entitled to resell the goods during the normal course of business. It shall however then assign to us all debts due to it from a third party in the amount of the invoice arising from the sale.

We reserve the right to collect the debt assigned to us ourselves, if our contractual partner falls into persistent payment arrears.

Our contractual partner further undertakes to secure the retention of title in our favour even after the goods are resold, and to this end to take the measures necessary under the applicable national law in each case.

If the goods are processed with items that do not belong to us, then we shall acquire joint ownership to the new object in the ratio of the value of the items delivered by ourselves to the other items processed.

Our contractual partner shall not be entitled to pledge the goods that are subject to reservation of ownership or to transfer their ownership by way of security.

## Use of software

Our contractual partner shall receive a non-exclusive usage right in the software contained in the scope of delivery, limited to the operation of the system. This software must neither be modified, nor decompiled, nor copied, nor must rights or information be passed on third parties. The granting of sub-licences shall not be permitted. The source code is our sole intellectual property.

## Prices and payment

Unless otherwise agreed, the prices shall be “ex works, excluding packaging”.

The payment terms shall be set out in the order acknowledgement.

If cash discount has been agreed upon, the corresponding deduction shall be allowed exclusively from the final payment, and only if all payments have been made within the deadlines agreed upon, and the contractual partner is not in arrears with other payments.

Our contractual partner shall only have a right of setoff provided its counterclaims have already been finally and absolutely approved or have been accepted by us. The contractual partner may only exercise a right of retention provided its counterclaim is based on the same contractual relationship.

If our contractual partner is in default in payment, then we shall have a right of retention of the services we are required to provide.

If our contractual partner does not meet its obligations within a reasonable period we have set, we shall be permitted to withdraw from the contract and to request flat-rate damage compensation to the amount of 25 per cent of the purchase price. The compensation for damages shall be increased or lowered if our contractual partner proves a lower damage or we can prove a higher damage.

## Passing of risk

The risk of accidental loss and accidental deterioration of the delivery items shall transfer when they are delivered to the carrier. This shall apply even if our contractual service obligation includes the installation and commissioning of the delivery items at the contractual partner's premises and/or we are required to bear the freight costs.

The transfer or delivery shall be deemed to have taken place even if our contractual partner is in default of acceptance.

## Acceptance

Each of the contractual parties may require formal acceptance of the service to take place. Acceptance may not be refused in the event that minor defects should exist.

If no formal acceptance has taken place, although we have set the contractual partner a reasonable period of acceptance after completion of the work, our services shall be deemed to be accepted two months after use by our contractual partner, at the latest, however, three months after delivery to our contractual partner, unless our contractual partner has refused acceptance within this period stating at least one defect.

The obligation of our contractual partner to immediately inform us about defects after receipt of the service shall remain unaffected even if our contractual partner is not identical with the user.

Tools required up to the completion of commissioning and the acceptance of our products (such as circular saw blades, prestressing steel, sleeper moulds and anchor plates) and test materials (such as wood or other material to be processed) shall be rendered available free of charge free domicile in the requested quantity by our contractual partner, unless any deviating agreement has been concluded in an individual case. This shall apply also for potentially required rework.

## Warranty

We shall provide warranty for defects in our services by rework or by making a replacement delivery, at our choice.

The warranty period for new goods shall be twelve months as from acceptance of the service. However, we shall retain the right to agree on shorter warranty periods if the goods are used in multiple-shift operation by concluding individual agreements.

Second-hand goods shall be supplied with the exclusion of any warranty.

Our contractual partner undertakes to co-operate to a reasonable extent when faults are being sought and when replacement parts are being fitted. Replaced parts shall become our property and are to be returned to us upon request.

If our warranty obligation consists in the replacement of a part or in the execution of work which requires no specialist knowledge as provided by our staff, there shall be no right to fulfilment by our staff.

Our contractual partner shall bear the entire burden of proof for all claim prerequisites, in particular for the defect itself, for the time at which the defect was discovered and the timeliness of the notice of defect.

If the contractual partner chooses to withdraw from the contract due to a material defect after subsequent fulfilment has failed, it shall not be additionally due any claim for damages due to defects.

If the contractual partner claims damages after failed subsequent fulfilment, the said shall accept the service nonetheless, if he can reasonably be expected to do so. The damages payment shall in this case be restricted to the difference between the purchase price and the value of the defective item. This shall not apply if we have maliciously committed the breach of contract.

In the absence of any other agreement, our warranty obligation shall be restricted in geographical terms to the registered office of the contractual partner.

If we are not commissioned with the installation and commissioning, then a charge shall in any event be made the first time a fitter is sent to the place of use.

The observation of performance specifications shall not be warranted a hundred per cent, because performance deviations of up to twenty per cent may occur for different reasons under production conditions at our contractual partner.

## Restrictions of liability

The basis and amount of the damage, which has been caused by culpable default on our side, shall have to be proven by the contractual partner. Our contractual and extra-contractual liability shall be limited to intent or gross negligence, provided it is not a violation of an essential contractual obligation or the injury to life, physical injury or damage to health. The same shall apply to the liability of our vicarious agents. The liability in conformity with the German Product Liability Law shall remain unaffected hereof. The amount of our liability shall be limited as follows:

- In total, our liability shall be limited to a maximum of 15 per cent of the net contract value.  
The liability for delay in delivery shall be limited to 0.5 per cent for each full week of delay, maximum to 5 per cent of the net contract value, however.
- All claims of the contractual partner - with the exception of such caused by intent or gross negligence or due to the injury to life, physical injury or damage to health - shall become time-barred twelve months after the transfer of risk.
- We shall not be held liable for pecuniary losses caused by the loss of production and loss of profits, for example.

## Contract manufacture

No liability for quality processing shall be assumed for faults which can be traced back to bad, unsuitable or unknown material quality. Processing, repair or restoration of second-hand parts shall also be included in the exclusion of liability.

We shall not provide any compensation for any processing-related rejects, change of shape, impairment of dimensional accuracy and accuracy of fit, loss, damage etc., unless there is intentional or grossly negligent cause on our side. In this case, the contractual partner is eligible to compensation of the value at our option. All our calculations shall be based exclusively on the services ordered by the customer and to be provided by us. The value of the parts processed is not known to us. Compensation of damage of any kind and no matter on which legal basis shall be limited to the amount of our net work wage claim (net contract value). We shall not assume any liability for risks unknown to us in type and amount. If the contractual partner requests additional securities, which are based on the part value, for example, we shall be informed about its value and the full scope of the risk to be covered by us before processing the parts. If and when necessary, agreements have to be concluded on risk limitation, which we have to confirm in writing.

## Final provisions

The contractual language shall be German or English. This shall be evident from the order acknowledgement.

The place of jurisdiction shall be our company headquarters.

If individual provisions of the contract with our contractual partner, including these General Terms of Business, should be or become fully or partially invalid, this shall not affect the validity of the remaining provisions. If this should be the case, the contractual parties shall be obliged to replace the fully or partially invalid rule by a valid rule that comes as close as possible to the economic meaning of the invalid provision.

On conclusion of contract, these General Terms and Conditions and the Terms for Installation of Paul Maschinenfabrik GmbH & Co. KG shall solely apply.