



## General Terms and Conditions of Supply and Payment

### TIBO Tiefbohrtechnik GmbH as at 7/2015

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Applicable in transactions with entrepreneurs (S.14 Bürgerliches Gesetzbuch – German Civil Code "BGB"), legal entities under public law and public law special funds.

**General:** Only the following terms and conditions shall apply in respect of goods/services supplied by us. Terms and conditions of the customer that deviate from, contradict or supplement these TCB shall not apply, unless we have agreed in writing to their application in the specific case. These terms and conditions shall also apply in respect of all future supplies to customers until our new terms and conditions of supply come into force.

**Offer, conclusion of the contract, scope of supply:** The customer's order constitutes a binding offer that we may accept by sending an order confirmation or by commencement of fulfilment of the order. Our previous offers are subject to confirmation and nonbinding. Cost estimates are nonbinding. Our written confirmation, where available, shall be determinative of the content and scope of the contract. The quality of the delivered goods shall conform, save where agreed otherwise, to the details in our offer. To be effective, oral offers made before or at the time of conclusion of the contract must be confirmed in writing.

Dimensions, weight, use, performance figures, physical data, illustrations, properties, technical classifications, construction years and descriptions are only binding for execution of the order where this is confirmed expressly in writing. We reserve the right to make changes in respect of construction, execution and materials used in so far as this does not significantly affect the assumed or customary serviceability of the goods to be supplied.

Technical advice is not the subject matter of the contract unless this is expressly agreed in writing. It is only binding if it is given in writing, and it does not release the customer from the obligation to use the goods to be supplied in a competent and appropriate manner.

We retain all proprietary and industrial property rights and copyrights in all our illustrations, drawings, calculations, other documents, data, information, knowledge and experience made accessible to the customer (including quality characteristics that are to be ascertained from objects or software provided). The customer must obtain our express written agreement before passing such on to third parties.

**Protection of suppliers/customers:** The customer assures us of supplier and customer protection should we offer to the customer an object for sale or purchase at a third location, and the customer undertakes to negotiate exclusively with us on the prices and contracts concerning all objects available for sale or purchase at this location

and not to conduct such negotiations either directly or indirectly with third parties without our separate written approval. Further orders, transactions and deliveries resulting from such business connections shall also be deemed to have been arranged through us and shall be subject to these conditions. Details provided by us concerning machine locations and interested buyers are only intended for the recipient and may not be handed on to third parties without our written consent. If the customer breaches the aforesaid conditions it shall be liable to us in damages.

**Prices:** Prices apply to the scope of services and goods to be supplied as set out in the order confirmation. Additional and extra services will be invoiced separately. The prices are in euros excluding the statutory VAT at the rate applicable on the date of delivery. Any possible customs duties, fees, taxes and other public duties shall be borne by the customer.

**Delivery performance, delivery date:** We may at any time make part deliveries and invoice correspondingly in so far as this is reasonable for the customer, i.e. where part delivery does not materially affect assumed or customary serviceability for the customer, delivery of the remaining goods to be supplied is assured and the customer does not as a consequence incur any additional expense or costs (unless we confirm that we shall bear such costs). Rejection of part deliveries does not release the customer from the obligation to accept the rest of the delivery in accordance with the contract.

Details of periods and dates for the delivery of goods and services are not binding. The commencement of and compliance with agreed periods and dates is subject to the timely clarification of all details of the order and the timely performance of all obligations of the customer to cooperate such as e.g. the timely receipt of all materials, advance work, documents, approvals, analyses, clearances on the part of the customer and compliance with the agreed payment terms, in particular payment of agreed advance payments or the opening of a letter of credit by the customer. If these conditions are not satisfied, the delivery periods will be extended appropriately; this shall not apply where we alone are responsible for the delay. Delivery periods and dates are deemed complied with where by expiry of the period the delivery is made ex works or readiness for dispatch has been notified. They are also deemed complied with on notification of readiness for dispatch where the goods to be delivered cannot be delivered on time where we are not at fault.

If delivery is delayed at the request of the customer, we shall invoice the customer, beginning one month after notification of readiness for delivery, for costs incurred for storage at our works, and in a minimum sum of 0.5% of the amount of the invoiced value of the goods, for each month. We may, having set a reasonable deadline and after its



ineffective expiry, dispose of the goods elsewhere and supply the customer within a reasonably extended delivery period.

Where we are unable to comply with binding delivery deadlines on grounds for which we are not responsible, (unavailability of goods or services), we shall inform the customer of this immediately and at the same time advise of the anticipated new delivery period. If the goods or services are also not available within the new delivery period, we may withdraw from the contract in whole or in part; we will reimburse any payments made by the customer without delay. Goods shall be deemed unavailable within the meaning of this clause in particular where our supplier fails to deliver on time, where we have entered into a corresponding contract for the purposes of fulfilling the customer's order, neither we nor our supplier are at fault or we are not in the particular case under an obligation to source goods or services.

**Payment terms:** Payment is due within 14 days from the date of the invoice without any deductions. This applies in particular for the delivery of spare parts and accessories. For delivery of machinery we may require advance payment of 1/3 of the purchase price on receipt of the order and the remaining 2/3 of the purchase price on acceptance by the customer at our works prior to delivery. This applies correspondingly for part deliveries in respect of the value of the part delivery. Costs of payment transfers shall be borne by the customer.

The customer may only set-off and withhold payments where its counterclaims are undisputed or have been legally established and may exercise a right of retention only where the counterclaim is based on the same contract. In case of defects in goods the customer's counterclaims are not affected by these TCB.

Where payment is effected in foreign currency the obligation to pay is deemed complied with only once we have received the full invoiced amount in euros in cleared funds.

In the event of default of payment we shall invoice for the applicable statutory default interest. Claims for additional damages caused by delay are reserved. Our claims for commercial maturity interest against business people remain unaffected (S.353 Handelsgesetzbuch – German Commercial Code – "HGB").

If the customer delays in making payments or if it appears following conclusion of the contract that our claim to payment is at risk owing to the customer's inability to pay, we may refuse to deliver until all our claims have been satisfied in full or adequate security has been provided for them. We may then also demand immediate payment of all outstanding accounts receivable from the business relationship regardless of agreed periods for payment. If the customer does not provide the security required within a reasonable period set by us, we can, without prejudice to our rights, demand compensation and/or recover the subject matter of the contract delivered subject to retention of title, withdraw from the contract (S.321 BGB); the statutory provisions for dispensing with a time limit

remain unaffected. In the case of contracts for the production of specific items (made to specification) we can withdraw immediately. The defence of uncertainty shall extend to all other deliveries and services in the business relationship with the customer.

**Authority to collect: Our employees and representatives have no authority to collect.**

**Reservation of title:** The goods delivered shall remain our property until settlement of all claims arising from the contract for supply and all other claims that we may have against the customer in connection with the goods supplied, e.g. for commissioned work, repairs, deliveries of spare parts and accessories or other services. The retention of title shall also continue in place for all – including future and contingent – claims that we may have against the customer in the context of the business relationship and for debts unilaterally incurred by the liquidator on opting for performance. This shall also apply where some or all outstanding receivables have been included in a current account and the balance has been drawn and acknowledged.

**In the case of delivery on credit the following shall apply in addition for the duration of the retention of title:**

The customer has authority to operate and use the goods supplied in the normal course of business. Any other use or transfer affecting our security or alteration of the goods supplied (for example resale, further processing, pledging, use as security, leasing etc.) is permitted only with our express prior agreement. We shall at the customer's request waive reservation of title if the customer performs all its obligations in relation to the goods supplied and has provided suitable security for the remaining receivables under the business relationship.

However where the customer combines the goods supplied with other moveable items so that they become material parts of an integrated item or processes them into newly manufactured items, the customer hereby transfers coownership in the new item to us in the proportion that the sum invoiced for the goods supplied bears to the other materials used.

The customer shall keep safe for us the goods supplied for the duration of the reservation of title at no charge exercising the care of a competent business person. In particular it must keep the goods supplied in good condition, carry out necessary repairs and insure them against fire, flood, theft and burglary including the provision that we are entitled to the rights arising from such insurance. Where evidence of insurance in accordance with our requirements is not provided, we may insure the goods supplied at the customer's cost.

However where the customer sells on the goods supplied, it hereby assigns to us, as security for all receivables covered by the reservation of title, its claims arising under the sale on of the goods supplied together with all ancillary rights with priority over all other claims against it. Where the customer sells on new items manufactured from the goods supplied or installs them on another party's property



or combines them with another party's goods and thus acquires receivables, it hereby assigns to us also these receivables with all ancillary rights with priority over all other claims against it. We hereby accept the customer's assignment. The customer may, along with us, collect the receivables arising from the sale on. The power to collect will expire in the event that we revoke it, at the latest in the event of default in payment, dishonouring of a bill of exchange or cheque or application to open insolvency proceedings. We shall only exercise our right of revocation if it appears following conclusion of the contract that our claim to payment for this or other contracts with the customer is at risk owing to the customer's inability to pay. On our request the customer shall be obliged, on the termination of the right to collect, to account to us in detail for the receivables from the sales on, to inform its customers immediately of the assignment to us and to pass to us all documents required for collection.

Pledging or assignment to third parties of the debts due from the sales on is not permitted.

The customer must inform us immediately of any attachment or other adverse interference by third parties, sending us the necessary documents (e.g. distraint protocol) and must confirm our retention of title both to the third party and to us in writing. The customer shall be liable for damage incurred by us where notification and confirmation are neglected or not made on time. The customer shall bear all costs that must be incurred in removing the interference or for the return carriage of the supplied goods, where these are not reimbursed by the third party.

If the customer acts in a way contrary to the contract, in particular in the case of default of payment or where a bill of exchange or cheque is dishonoured when due, we may recover the goods supplied and for this purpose if necessary we may enter the customer's business premises and the customer shall be obliged to surrender the goods. The same shall apply if it appears following conclusion of the contract that our claim to payment for this or other contracts with the customer is at risk owing to the customer's inability to pay. We may, notwithstanding the customer's payment obligations, dispose of the recovered goods and accessories on the open market on the best possible terms. The proceeds of sale shall be credited to the customer after deduction of costs and all our outstanding receivables from the business relationship, any surplus proceeds shall be paid out to the customer. At our election we can acquire the goods supplied at their estimated value and allow credit for this amount against the liabilities of the customer.

The assertion by us of the retention of title and the recovery of the goods supplied shall not be deemed to be rescission of the contract.

If the value of the security provided exceeds the secured debts, in so far as these have not yet been settled, including ancillary claims (interest, costs etc.) in total by more than 10 %, then we shall at the customer's request release the security to that extent at our election.

**Acceptance, transfer of risk, performance:** Delivery shall be Free Carrier ("FCA INCOTERMS 2010"), unless otherwise agreed, including where we have agreed freight-free delivery or have taken out insurance for the benefit of the customer against the risk of loss or damage to the goods to be delivered during shipment. Place of delivery shall be the principal place of business of our company.

Where the manner of acceptance is contractually agreed (e.g. in the case of contract work), the date of acceptance shall be decisive for the passage of risk. It can only occur at our works immediately on notification of readiness for delivery. The acceptance costs relating to personnel (travel expenses etc.) shall be borne by the customer, the technical acceptance costs (tests, testing machinery, experts etc.) shall be invoiced separately to the customer by us.

If without fault on our part acceptance does not occur, does not occur on time or is not complete, we may dispatch the goods to be supplied without acceptance at the cost and risk of the customer or store them and invoice for the cost.

**Warranty:** The warranty period shall be 12 months from the commissioning but no longer than 14 months from the date on which the pre-acceptance test at TIBO took place. We are under no warranty obligation, if the installation will not be carried out by our technicians.

**Claims for defects:** The statutory provisions shall apply in respect of the rights of the customer concerning defects as to quality and title, save where otherwise agreed hereinafter. In all cases the statutory provisions for supply to an end user remain unaffected (recourse against suppliers under S. 478 BGB).

The customer must notify in writing any apparent defects at the latest within 14 days after receipt of delivery, whereby the timely dispatch of the notification shall be sufficient to observe the deadline. Where the manner of acceptance of the goods to be supplied is agreed contractually by the customer, apparent defects must be notified immediately. Defects that cannot be discovered within this period, even on the most careful examination, must be notified in writing on discovery without delay, at the latest prior to the expiry of the following limitation periods. If the customer is a business person, S. 377 HGB shall apply in respect to defects in quality.

In the case of justified complaints made on time we can at our election rectify the defect or deliver a defect-free item (supplementary performance). The customer must allow us a reasonable period for supplementary performance in respect of each individual defect. The customer can only reduce the purchase price or withdraw from the contract if the supplementary performance is unsuccessful or unreasonable or we refuse to perform either method of supplementary performance.

We shall not be liable for defects that only affect immaterially the serviceability of the goods supplied, or in the event of minor deviations of the goods supplied from the agreed properties, or in the event of natural wear and tear, or for properties of the goods supplied or damage that arise after the passing of risk as a consequence of improper or careless handling, excessive loading, unsuitable operating materials and lubricants, inadequate assembly or installation, not undertaken by us, unsuitable ground conditions or because of other specific external influences on the delivery not anticipated by the contract.

We may make supplementary performance conditional upon the customer paying the full purchase price. The customer may however withhold a reasonable proportion of the purchase price in relation to the defect.

In case of used materials and equipment the customer has the right to carry out inspection and testing at his own cost prior to delivery. On delivery of used goods, our obligations shall be deemed satisfied in full and correctly. The right to raise complaints later is excluded save where otherwise expressly agreed.

Claims in respect of defects shall be time-barred one year after delivery. Where acceptance has been agreed, the limitation period shall commence on acceptance. This shall however not apply in so far as S.438 para. 1 No. 2 (construction works/materials), S.479 para. 1 (right of recourse) or S.634a para. 1 No. 2 BGB (construction defects) provide for longer periods. The longer statutory periods shall also apply in cases of fraudulent intent, in respect of the claims for damages governed by the following paragraph and for claims under product liability legislation.

**Other liability:** We shall be liable in accordance with statutory provisions in respect of breach of contractual and noncontractual obligations, save where otherwise provided in these TC and in particular in the following provisions.

We shall be liable for damages, irrespective of the legal basis, in the case of intent and gross negligence. In case of simple negligence including that of our representatives and employees we shall be liable only

- for damage caused by loss of life, personal injury or damage to health,

- for damage caused by breach of a material contractual obligation; in such case however our liability shall be limited to compensation for foreseeable, typically occurring damage.

The exclusions and limitations of liability provided by the foregoing paragraph shall not apply where we intentionally conceal a defect or have guaranteed the quality of goods or services. The same shall apply in respect of claims of the customer under product liability legislation.

The customer can only withdraw or terminate on account of a breach of obligation that is not a defect if we are responsible for the breach of obligation. An unrestricted

right of termination on the part of the customer (in particular under Ss. 651, 649 BGB) is excluded.

The preceding exclusions and limitations of liability shall also apply in respect of the personal liability for compensation of our representatives and employees to the customer.

**Jurisdiction, applicable law:** Jurisdiction for all disputes arising from or in connection with the contractual relationship that is based on these terms, including for proceedings based on cheques, bills of exchange or deeds, shall be the principal place of business of our company or at our election also the principal place of business or a branch of the customer if the customer is a business person, legal entity under public law or a special fund under public law. The law of the Federal Republic of Germany, excluding private international law (conflict of laws), and the United Nations Convention on Contracts for the International Sale of Goods (CISG) of 11 April 1980 in its current version shall apply exclusively in respect of these terms and conditions and all legal relations between us and the customer.

**Miscellaneous:** Should any of the agreements between the parties to the contract be or become invalid, the validity of the remaining parts of the contract shall not be affected thereby. The parties to the contract are under an obligation to make all reasonable efforts in good faith to replace the invalid condition with a provision that achieves the material and commercial purpose of the invalid condition, in so far as this does not result in any fundamental alteration of the content of the contract.