



GENERAL TERMS AND CONDITIONS (GT&C)

1. GENERAL

The GT&C apply to all contracts, in particular, sales, service and maintenance contracts whereby they prevail any terms and conditions of Customer which have not been expressly acknowledged in writing. Except as otherwise agreed upon the contract is brought about our written confirmation of the order.

We reserve ownerships and copyrights on samples, costs estimates, drawings and similar information in material and immaterial manner as well as in electronic form. They may not be disclosed to third parties without our prior written consent. We are obliged to disclose information and documents to third parties which are named as confidential by the customer only with his consent.

2. ESTIMATE OF COSTS

Any estimate of costs is without obligation for us if not otherwise confirmed in writing. Estimates of costs will be invoiced to Customer if they do not lead to an order.

3. TRADE TERMS

If goods are to be delivered upon trade terms (FAS, FOB etc.) to which the Incoterms (2000 edition as amended from time to time) apply, then the provisions of the Incoterms applicable to such trade term apply to the respective contracts insofar as the same may be inconsistent with any term of the same.

4. SHIPMENT/DELIVERY

Partial shipment or delivery and/or transshipment shall be permitted. Each partial shipment or delivery shall be deemed to be the subject matter of a separate contract to the intent that failure or defects in such shipment or delivery shall not entitle Customer to treat such failure or defect as a repudiation of the contract as a whole. If the goods are to be delivered under the contract FAS, FOB sea port or FOB airport, we will decide the vessel or the aircraft for the shipment or delivery of the goods, unless Customer, at its own responsibility, expressly nominates a liner or an aircraft. Any dates quoted for delivery of the goods are considered as not binding. We shall not be liable for any delay in delivery of the goods, unless time was of the essence and we have delayed delivery intentionally without good cause, by gross negligence or under violation of main contractual obligations. Time for delivery shall not be of the essence unless previously agreed by us in writing. In the event that any necessary licence cannot be obtained from the government of the importing or exporting country respectively, the contract shall be null and void and of no effect.

5. PROPERTY AND RISK

Property in the goods shall not pass to Customer until the date on which all amounts outstanding from Customer to us under any contract between the parties have been unconditionally and fully paid. Unless property has passed to Customer, Customer shall have possession of the goods as our fiduciary agent and bailee only and Customer shall maintain the goods separately from its own property and that of any third party, properly stored, protected and insured and identified as our property; we shall be permitted to inspect the goods at any time and may re-possess the same if Customer is in delay with any payment. Customer may sell the goods in the ordinary course of its business but shall not otherwise (and shall not purport to) sell, mortgage, encumber or part with possession of the goods nor allow any lien or encumbrance to arise over the same. Customer herewith assigns to us for security purposes all of Customer's receivables emanating from Customer's sale of goods under retention of title, provided that Customer shall remain entitled to collect such assigned receivables until we revoke this authorisation and further provided that we may disclose this assignment to his customers at any time. We herewith accept this assignment. In the event that the fair market value of the security obtained by us should exceed the amounts assigned from Customer by 20% or more, we shall release the excess security upon Customer's request. Notwithstanding that property in the goods may not have passed to Customer, risk in the goods shall pass to Customer either as provided by applicable Incoterms or (if Incoterms do not apply) upon delivery of the goods to Customer or the carrier or other agent, whichever occurs first.

6. PRICES AND PAYMENT

Except as otherwise agreed upon prices are ex works including loading, but exclusive of packaging and exclusive of the respective statutory VAT. Except as otherwise agreed upon payment has been made without any deduction to our account according to the confirmation of order.

The customer is entitled to withhold payments or to offset with counterclaims only insofar as his counterclaims are undisputed or assessed in a legally binding judgement.

In case payment shall be made by a letter of credit under the contract, Customer shall establish, in favour of us, an irrevocable and confirmed letter of credit negotiable by sight draft through a prime bank of good international repute satisfactory to us immediately after conclusion of the contract with a validity period extending at least 20 days after the last day of the period of the respective shipment or delivery. Such LC shall be in a form and upon terms satisfactory to us and shall expressly permit part shipment and shall authorize reimbursement to us for such sums, if any, as may be advanced by us for consular in-voices, inspection fees and other expenditures for the account of Customer. Should payment under such letter of credit not be duly effected, Customer shall, upon notice thereof from us, immediately make payment in cash to us directly and unconditionally together with interest from such date of which such payment became due under such LC until payment by Customer. All bank charges outside Germany, including collection charges and stamp duties, if any, shall be for the account of Customer, provided that confirming commissions shall be for the account of

Customer, regardless of being charged within or outside Germany. Customer shall, in addition to the price of the goods or services specified on the face of the contract, pay all taxes, duties and other fiscal dues of any kind levied in respect to the sale of the goods or rendering of the services including (but not limited to) VAT and customs duties. All payments under the contract shall be made by Customer free and clear from any deduction and from any set-off or counterclaim of any kind to which Customer might otherwise be entitled, unless recognized by us or adjudicated to Customer in a final court judgement. Time for payment under the contract and/or for opening of any LC or for making any other arrangements relating to the payment shall be of the essence of the contract. If we agree to allow customer credit, we may at any time in our sole discretion limit or cancel the credit of Customer and may likewise require payment of all or any part of the price for the goods or services to be made in cash in advance of delivery or may require guarantees or other security to be provided and any payment or security so required shall be paid or furnished by Customer promptly upon such requirement. We shall be under no liability to deliver the goods or render the services unless Customer has complied with this condition and has discharged all its other obligations to us under the contract or on any other account. In case of delay in payment of any amount due to us, Customer shall pay interest from the due date until payment at a rate of 8%-points over the basic interest rate of the European Central Bank. We may set-off against any sums which may become due from us to Customer, any sums which may become due from Customer irrespective of the contract or any other account.

7. INSURANCE

If the contract is on a CIF or CIP basis, 110% of the contract price shall be insured by Seller, unless otherwise agreed in writing.

8. INCREASED COSTS

If, after the conclusion of the contract, there shall be any increase in the amount of any charges or payments for or of the nature of freight rates, surcharges, taxes, customs duties, export and import surcharges or other governmental charges or insurance premiums which in any such case under the contract are payable by us or if any new or additional charges or payments shall be incurred by or im-posed on us with respect to the goods or services, then the amount of such increase or such new or additional charges or payments shall be for the account of Customer who shall promptly reimburse us with the amount of same.

9. WARRANTY AND LIABILITY

1. If the delivery goods cannot be used in accordance with the contract due to a fault on the part of the Seller by having omitted or provided wrong proposals or advice, or due to the violation of other contractual collateral obligations, in particular instructions for the operation and maintenance of the delivered goods, the provisions of Clause 9. and 10.2 shall apply analogously excluding any further claims by the buyer.
2. The supplier is liable for damage which does not occur to the delivered object itself - irrespective of any legal grounds whatsoever - only in cases of:
 - a. wilful intent,
 - b. gross negligence on the part of the owner or senior employee,
 - c. culpable harm to life, body and health,
 - d. for defects which were dishonestly concealed or where the supplier guaranteed that they were not present,
 - e. for defects to the delivered object, as far as a liability exists in terms of the Product Liability Act for damage to persons or material for privately used items.
3. The Supplier shall be liable for any culpable violation of significant contractual obligations even for cases of gross negligence by non-managerial staff and simple negligence; the latter is restricted to reasonably predictable damage in terms of standard contract provisions. Further claims are excluded.

10. Claims on defects

The supplier shall provide the following warranty for material defects and defects of title under the exclusion of further claims - subject to Para 9:

1. At the Supplier's discretion, all those parts which could be proven to be defective due to a circumstance which existed prior to the transfer of risk shall be repaired or replaced free from fault and free of charge. The Supplier must be notified immediately in writing on determination of such defects. Replaced parts become the Supplier's property.
2. In order to carry out all improvements and replacement deliveries which the Supplier deems necessary, the Customer - after concurring with the Supplier - shall give the Supplier the required amount of time as well as the opportunity; otherwise, the Supplier is released from the liability of any consequences which may arise. The customer is only entitled to remove the defect himself or allow it to be removed by a third party and demand payment for the required expenditure in urgent cases where operational safety is endangered or to prevent a disproportionately high damage, whereby the Supplier must be notified immediately.
3. As far as the complaint should prove to be valid, any costs incurred as a result of the improvement or replacement delivery are for the Supplier's account; this includes the cost of the replacement item as well as for the despatch. The Supplier additionally carries the cost for the disassembly and installation as well as costs for the possible provision of necessary technicians and temporary staff including travel costs as far as there is no disproportionate financial burden on the Supplier.
4. Within the framework of legal provisions, the Customer has a right to withdraw from the contract if the Supplier - in accordance with legal exceptions - allows a fruitless expiry of the deadline set for the improvement or replacement delivery as a result of a material defect. In the event of an insignificant defect, the Customer merely has a right to reduce the contract price. The right to reduce the contract price is otherwise excluded. Further claims are regulated in Para 9.2 of these conditions.
5. No warranty is assumed in particular in the following instances:

Unsuitable or unprofessional use, faulty assembly [installation] or commissioning on the part of the Customer or a third party, normal wear and tear, faulty or negligent treatment, improper maintenance, inappropriate means of operation, unsuitable construction site, chemical, electro-chemical or electrical influences - as far as they are not the Supplier's fault.

6. The Supplier does not assume any liability for any consequences arising out of an unprofessional repair carried out by the Customer or a third party. The same applies if modifications are made to the delivered goods without the Supplier's prior approval. The disassembly of defect and/or the installation of newly delivered parts during the guarantee period is free of charge and carried out by employees of MBO Maschinenbau Binder Oppenweiler GmbH & Co. KG or authorized employees and at the risk of MBO Maschinenbau Binder Oppenweiler GmbH & Co. KG. The Customer can only assert claims for damages against MBO Maschinenbau Binder Oppenweiler GmbH & Co. KG in terms of material defects if

- the installation and commissioning of the delivered object was carried out by personnel authorised by MBO Maschinenbau Binder Oppenweiler GmbH & Co. KG
- no repair work was carried out without the approval of MBO Maschinenbau Binder Oppenweiler GmbH & Co. KG.
- no spare parts were installed which are not original parts or parts approved by MBO Maschinenbau Binder Oppenweiler GmbH & Co. KG
- no independent modifications were carried out on the delivered object.

7. Should the use of the delivered object lead to an infringement of national industrial property rights or copyrights the Supplier, at his expense, will provide the Customer with the general right to the further use or modify the delivered object in a reasonable manner so that an infringement of property rights no longer exists.

Should this not be possible in terms of reasonable economic conditions or within a reasonable period of time, the Customer is entitled to withdraw from the contract. The Supplier is also entitled to withdraw from the contract under the aforementioned conditions.

Furthermore, the Supplier will release the Customer from undisputed or legally determined claims related to the owners of the property rights.

8. Subject to Para 9.2, the Supplier's obligations mentioned in Para 10.7 are conclusive in the event of infringements of property rights or copyrights. These only exist if

- the Customer immediately notifies the Supplier of any asserted claims with regard to infringements to property rights and/or copyright,
- the Customer supports the Supplier to a reasonable extent in warding off the asserted claims or enables the Supplier to carry out the modification measures in terms of Para 10.7,
- the right to carry out all defensive measures including out of court regulations remains reserved for the Supplier,
- the defect of title is not caused by an instruction given by the Customer, and
- the infringement of a right is not caused by the Customer having independently modified the delivered object or used it in a manner which is not in accordance with the contract.

11. SERVICES

As regards the rendering of services such as repair, adjustment and/or maintenance, we will carry through the same carefully in the necessary scope during our working hours as specified in the "price list technical service" We reserve the decision as to where the services will be rendered. Transportation costs, if any, are to the burden of the Customer.

Our invoices will be based on the service reports to be signed by Customer at site or the respective reports of our repair shop as the case may be. Parts, material and travel/overnight expenses will be additionally invoiced on the basis of our actual price list "technical service" .Invoices are payable at the day of maturity without deduction.

12. ACCEPTANCE

Services having been rendered are principally subject to acceptance by Customer in written form (signing of the service report and/or acceptance record). We can request partial acceptance of demarcatable and economically independent parts of the services. In such a case, the last partial acceptance is deemed to be the final acceptance.

As soon as the contractual services or part of the same have been finalized, we will present to Customer the respective service report and/or acceptance record respectively. Customer undertakes to immediately, however, 1 week after receipt of the document at the latest, declare the acceptance which may not be withheld in case of defects which affect the entire functionality insignificantly only. Such deviations, if any, will be recorded in the acceptance record and will be removed in the scope of warranty. If the acceptance shows significant deviations from the performance owed, Customer may refuse acceptance and may fix a reasonable time limit for us to recover the contractual performance after which a new acceptance will take place. The acceptance (partial acceptance) is deemed to have been declared if Customer does not declare the same even after expiry of a reasonable grace period or refuses the same without sufficient grounds.

13. PATENTS, TRADEMARKS ETC.

We shall not be responsible to Customer for any alleged infringement of patent, utility model, design, trademark, copyright or any other industrial or intellectual property right in connection with the goods or services unless we are guilty of intent, gross negligence or the violation of main contractual obligations except that in any of such events we shall exert our best efforts to obtain permission to use the goods from the rights' owner or shall permit Customer to rescind the contract. Nothing herein contained shall be construed as transferring any patent, utility model, trademark, design or copyright in the merchandise; all such rights should expressly be reserved to the true and lawful owners thereof.

1) To the extent that MBO Maschinenbau Binder Oppenweiler GmbH & Co. KG owns intellectual property rights, including patents, utility models, trademarks, copyright, design rights, know-how, trade secrets or other protective rights pertaining to the contractual performances (products or services), or acquires such rights in the course of executing the contract or licenses such rights from third parties for the purpose of providing the contractual performances, such intellectual property rights shall remain with MBO Maschinenbau Binder Oppenweiler GmbH & Co. KG or the third party licensor, and the customer shall acquire only the rights to use as contractually agreed.

2) MBO Maschinenbau Binder Oppenweiler GmbH & Co. KG assumes no liability for the protectability or the validity of the protective rights pertaining to the contractual performances.

3) MBO Maschinenbau Binder Oppenweiler GmbH & Co. KG affirms that it has no knowledge of third party rights pertaining to the contractual performances, but assumes no responsibility that the contractual performances do not violate third party protective rights.

14. FORCE MAJEURE

In the event that the performance by us or our obligations under the contract is/are prevented by force majeure, directly or indirectly affecting our activities or any other person, firm or corporation connected with the sale, manufacture, supply, shipment, delivery or rendering services, including, but not limited to, act of God, flood, typhoon, earthquake, tidal wave, landslide, fire, plague, epidemic, quarantine, dispute, sabotage, explosion, accident or breakdown in whole or in part of machinery, plant, transportation or loading facility, governmental request, guidance, order of regulation, unavailability of transportation or loading facilities, curtailment, shortage or failure in the supply of fuel, water, electric current, or other public utility or raw material including crude oil, petroleum or petroleum products, bankruptcy or insolvency of the manufacturer or supplier of goods or services, by cutting, substantial change of the present international monetary system or any other cause or circumstances whatsoever be under our reasonable control, then we shall not be liable for loss or damage or failure or delay in performing our obligations under the contract and may, at our option, extend the time of shipment or rendering the services or cancel unconditionally and without liability the unfulfilled portion of the contract to the extent so affected.

15. CUSTOMER'S DEFAULT

If Customer shall make default in or commit any breach of its obligations to us under a contract or if Customer shall at any time become bankrupt or shall have a receiving order or administration order made against him or shall enter into composition with its creditors or shall become subject to a sequestration or if Customer's firm is dissolved or, Customer being an incorporated body, if a resolution of dissolution shall be passed (otherwise then for reconstruction or amalgamation provided by us) or a resolution to split Customer's corporate entity into several entities or if Customer shall be insolvent or shall be unable or be deemed unable to meet its commitments promptly as and when due or if any other event shall occur which, in our opinion, gives grounds for believing that Customer's ability to perform his obligations under the contract may be impaired, then and in any such event or the equivalent thereof in Customer's country of domicile, we may (without prejudice to any other right or remedy which it might have): (i) forthwith terminate the contract in whole or in part by notice in writing after giving Customer an opportunity to remedy its default, unless the receiver in bankruptcy should choose to fulfill the contract and/or (ii) suspend further performances in whole or in part and/or (iii) forthwith demand immediate payment of the contract price of the goods or services and all other sums which may be outstanding to us on any account whereupon the same shall become immediately due and payable and/or (iv) demand security by bank guarantee or otherwise for payment of the contract price and/or (v) repossess any of the goods held by Customer in which property has not yet passed to Customer and for this purpose enter upon any premises of Customer.

16. FURTHER ASSURANCE

Customer shall, from time to time (and at our request), execute such further assurances, instruments or documents and do or cause to be done any such other acts and things (e.g., registration) as may be necessary, proper or advisable under applicable laws and regulations to insure that property in, and legal and beneficial ownership of the goods passes to Customer only in accordance with the provisions of the contract.

17. RE-/EXPORT

Customer shall not, directly or indirectly, export, re-export, transship or make available any products, including software, parts, technical information/data and documents relating to the contract to any third parties outside Customer's country in violation of any applicable export control laws, rules and regulations promulgated and administrated by the competent government.

18. LAW APPLICABLE AND VENUE

The GT&C shall be governed by and construed in all respects in accordance with the laws of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply. Customer submits to the exclusive jurisdiction of the courts at our business place but we may institute proceedings in the courts of any other competent jurisdiction.

19. WAIVER

Failure or delay by us to enforce any of our rights against Customer shall not be construed as a waiver of such rights. If we waive any of our rights in relation to the breach of Customer of its obligations, such waiver (which must be in writing) shall not be construed as a waiver of such rights in relation to any other breach.

20. MISCELLANEOUS

If any provision of these GT&C is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions and the remainder of the condition in question shall not be affected.

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