

**General Terms and Conditions  
for STÖGER AUTOMATION GmbH  
Version 1.5  
25.01.2019**

For use in undertakings with business people, if the contract pertains to the operation of the commercial enterprise, or with legal entities or special funds under public law.

## **I. GENERAL**

(1) All deliveries, services and offers are provided exclusively on the basis of these general terms and conditions of supply. They are an integral part of all contracts that the supplier enters into with the buyer regarding deliveries or services. They are also applicable for all future deliveries, services and offers to the buyer, even if this is not expressly agreed upon each time.

(2) The buyer's or third party's terms and conditions are not applicable, even if their validity has not been specifically vetoed in the individual case. Even if we make reference to any communication containing or referring to terms and conditions of the buyer or any third party, this does not constitute any consent to the applicability of such terms and conditions.

(3) Our conditions of sale only apply towards companies in the sense of § 310 section 1 BGB [German Civil Code].

## **II. OFFER AND SCOPE OF DELIVERY**

(1) A contract comes into being – unless otherwise agreed – with the written confirmation of the order by the supplier. This order confirmation, potentially with subsequent alterations, is the controlling document for the scope of delivery. Side agreements and amendments require our written confirmation.

(2) Documentation, such as illustrations, drawings, information about weight and sizes and performance, are only approximate indications unless expressly identified as being binding.

(3) We reserve all proprietary rights and intellectual property rights to all samples, costing quotations, drawings, functional schematics and circuit diagrams - including those in electronic form. They may not be made accessible to third parties. All documents must be returned to us on request.

(4) We will use the documents submitted by the buyer only for the processing of the order.

(5) We reserve the right to carry out technical changes and improvements to the items ordered insofar as these relate to the improvement of the technology or the requirements of the legislature. Insofar as there are no pricing or functional changes arising from this, there shall be no requirement to notify the buyer separately.

## **III. PRICES AND SHIPPING COSTS**

(1) In the absence of special agreements, our prices shall be in Euros plus the VAT at the respective rate applicable at the time of dispatch.

(2) The prices apply ex works, including loading on site although excluding packaging and unloading and apply for the scope of services and deliveries stated in the order confirmation. Extra or special services will be calculated separately.

(3) The delivery costs depend on the type of shipping, the method of payment, the weight and the shipping destination. They are calculated and displayed per delivery or in the event of an order by telephone; they will be quoted and shown separately on the invoice. The shipping method is chosen to the best of our judgement and within the framework of admissible possibilities or in accordance with the customer's wishes. The expenditure for shipping, packaging and transportation insurance delivered free to the requested destination of the customer will be passed on to the buyer in addition to the original costs.

(4) Deduction of cash discounts requires a separate written agreement.

## **IV. PAYMENTS**

(1) In the absence of any other agreement existing between the contractual partners, the payment is net, i.e. without deduction and free of charges, and is to be made to us within 30 days of delivery and invoicing.

Unless otherwise agreed, payments shall be made without any deductions as follows:

a) For new machines with accessories:

30% down payment after receipt of order confirmation, payable within 14 days after the invoice date without deductions

70% with the generation of the final invoice on delivery, payable within 30 days after the invoice date without deductions

b) For spare parts:

Payable within 30 days without deductions

c) For servicing, repairs, maintenance and the provision of other services:

Payable within 30 days without deductions

d) Agreed milestone payments are payable within 10 days of the date of invoice without deductions

(2) STÖGER AUTOMATION GmbH reserves the right to fulfil the order only against cash on delivery or payment in advance, in individual cases or in the event that a credit insurer or a provider of the respective method of payment rejects the payment. In this case the customer can accept this or can withdraw from the contract.

(3) If there is a cancellation on the part of our contractual partner then the following conditions shall apply:

A cancellation fee in the amount of 10% to 100%, depending on the progress of the order, shall be applied.

(4) In the event of default in payment, STÖGER AUTOMATION GmbH is entitled to charge delayed payment interest at a minimum of 5 percentage points above the respective base interest rate in accordance with the German discount rate transference act, but at least 6% p.a.

(5) Payments from our buyer will be calculated in order on the basis of the oldest invoice still remaining open including interest and all associated ancillary costs, unless otherwise expressly agreed.

(6) Any set-off of counterclaim shall not be permitted unless proven at law or undisputed by STÖGER AUTOMATION GmbH. The retention of payments by the buyer due to counterclaims arising from other contractual relationships is excluded.

(7) If the financial situation of the customer deteriorates to an extent that there are doubts regarding his solvency, then STÖGER AUTOMATION GmbH shall be entitled to withdraw from the contract or to withhold our deliveries and services and grant the buyer a reasonable period to make advance payments or to provide collateral. After this period has expired STÖGER AUTOMATION GmbH are entitled to withdraw from the contract.

(8) Our regional representative is not authorised to accept cash payments. However, they may accept non-cash means of payment, insofar as these are made out in our name and in our favour.

## V. DELIVERY TIME

(1) The delivery time is deemed to have been met, if the delivery goods have been dispatched from the site on or by this date, or if the buyer has been informed that these are ready for shipping. Adherence to the delivery date requires that the buyer meet with his contractual obligations.

(2) The delivery period may be reasonably extended:

(2a) In the event of a failure to comply with payment conditions agreed with the buyer, in particular with delayed payments.

(2b) In the event of the buyer failing to provide us with the documentation required for the fulfilment of the order simultaneously with the placement of the order or immediately after a reminder has been issued for this. This applies in particular to drawings of the parts to be processed and connecting elements with tolerance specifications, sample parts, series parts and connecting elements in the requested quantities as well as all other documentation, which has been requested by us.

(2c) In the event of subsequent alterations of the original contract in particular if knowledge and facts arise during the processing and more accurate analysis of the order, which could not have been foreseen at the time of the order being placed.

(2d) In the case of force majeure, unforeseen operational disruptions within the scope of industrial disputes (strikes and lock-outs), difficulties in material procurement, delayed deliveries from our suppliers, as well as in the event of other unforeseeable obstructions that lie outside of our control or influence insofar as such obstacles can be verified as having a significant influence on the manufacturing or delivery of the delivery items. We are then also not responsible for these delivery delaying conditions, even if they arise within a pre-existing period of delay. In important cases, we will inform the buyer of the start and end of such obstacles.

(3) In the event of the delivery date not being observed due to the aforementioned reasons, which lie outside our responsibility, the buyer cannot claim against us for contractual penalties, order cancellation or other claims for damages. If the buyer suffers a loss as a result of a delay for which we were responsible, then we will be liable in accordance with the stipulations of clause X.

(4) If the shipping is delayed at the request of the buyer then the costs arising from the storage shall be charged to the buyer for each full calendar month. The assertion and proof of higher or lower storage costs is expressly reserved. After the expiry of a period of grace set by us for the acceptance of delivery we are then furthermore entitled to dispose of the delivery item and to agree a new delivery date.

We reserve the right to carry out partial deliveries, if

- the partial delivery is usable for the buyer within the scope of the contractually intended use,
- the delivery of the remaining goods ordered is assured and
- this does not cause any significant extra effort or additional costs for the buyer

(5) If the customer is in default of acceptance or culpably infringes other duties to cooperate, we are entitled to demand compensation for the damages which are due in this respect, including any additional costs. We reserve the right to enforce additional claims.

(6) Insofar as the requirements from section (5) are fulfilled, the risk of accidental loss or an accidental deterioration of the purchase item transfers to the customer at the time at which they have entered into default in acceptance or default in payment.

## VI. TRANSFER OF RISK AND GOODS ACCEPTANCE

- (1) In principle our deliveries are carried out ex-works, unless otherwise agreed with the buyer.
- (2) The risk is passed over to the buyer no later than the dispatch of the delivery item. This also applies if delivery conditions other than "ex-works without packaging" have been agreed, or if we have taken on additional services such as on-site delivery and erection of the delivery item, or if partial deliveries are to be carried out.
- (3) Should the dispatch be delayed as a result of circumstances for which the customer is responsible then the risk shall be passed on to the customer on the day that the goods are ready for shipping or acceptance.
- (4) To provide coverage for the transportation risks we insure every shipment at the buyer's expense as a matter of course, unless the buyer expressly declines our transport insurance and thus takes on the full transportation risk themselves. We are entitled to insure the shipment goods additionally against theft, breakage, fire, water and other damage at the cost of the buyer, unless the buyer has concluded a verifiable insurance contract themselves.
- (5) The buyer must report transportation damage of any kind to the transportation company immediately. Insofar as we have concluded a transportation insurance contract at the request of the buyer, the official findings of the transportation company regarding the damage and losses observed must be sent to us immediately so that we can assert a claim against the insurance.
- (6) Delivered items are to be accepted by the buyer, even if they exhibit significant defects, without infringing the rights from section X.
- (7) If the customer picks up the goods in the premises of STÖGER AUTOMATION GmbH, then the risk of accidental loss or accidental damage transfers to the customer with the transfer of the goods. Otherwise, the risk is transferred to the customer as soon as the goods are passed on to the customer by the transportation company.

## VII. RETENTION OF TITLE

- (1) We retain the ownership of the delivery item until the receipt of all payments - including those for any additionally owed ancillary services - from the delivery contract.
- (2) The buyer is not entitled to pledge the goods or use them as collateral. In the case of pledges or confiscation or any other intervention by third parties, we must be informed immediately.
- (3) In the event of conduct contrary to the contract on the part of the customer, and in particular payment arrears, we are entitled to take back the delivery goods after issuing a warning to this effect, and the buyer is obliged to hand these over accordingly. The assertion of the retention of title as well as the pledging of the delivery item by us shall not be deemed as a withdrawal from the contract.
- (4) The buyer is entitled to resell the goods within the scope of an orderly commercial transaction. However, the buyer hereby immediately assigns to us all claims from customers or third parties that accrue from the resale. This is irrespective of whether the goods subject to retention have been resold with or without an agreement. The buyer is also entitled to collect these debts after assignation. Our right to collect the receivables ourselves remains unaffected; however we undertake not to collect the receivables insofar as the buyer meets in an orderly manner with his payment obligations. If necessary the buyer will inform us of all information required for the collection of claims, submit the required documents to us and inform the debtors of the assignment. If the delivery goods are resold to a third party along with other goods then the claim of the buyer on the customer shall be deemed assigned to us to the amount of the delivery price agreed between us and the buyer.
- (5) The processing or alteration of the property subject to retention by the buyer is always performed on our behalf. If the property subject to retention is processed with other objects not belonging to us, we acquire the co-ownership of the new item in the relationship of the value of the property subject to retention to the other items with which it was processed at the time of the processing. The same applies for the item which arises from further processing as for the delivery item supplied under reservation.
- (6) We will release the securities assigned to us insofar as their value exceeds the receivables to be secured by more than 25%, insofar as these are not yet discharged.

## VIII. COMMISSIONING

- (1). After the delivery of standard machines, special machines and special devices, installation and commissioning by the buyer in the presence of our factory installation personnel is highly recommended.
- (2) All necessary preparations and machinery connections for the commissioning of the delivery item must be undertaken in good time by the buyer before the arrival of our installation personnel so that they can start immediately with the installation and commissioning. Insofar as necessary, the buyer must provide to our installation personnel, qualified personnel and the materials and equipment etc. necessary for the commissioning and calibration, at their own expense.
- (3) All costs and expenses arising due to the posting of our factory installation personnel must be reinstated by the buyer. The travel time and waiting time are considered work time. The buyer shall bear the transport risk for the delivery parts delivered by our installation personnel.
- (4) In the event of an industrial accident whilst the machine is being installed and commissioned by the buyer, our liability is restricted exclusively to matters that are the fault of our own personnel.
- (5) Any necessary rework carried out at the customer's premises shall be borne by the buyer insofar as sufficient machine trials were not possible at the factory prior to shipping due to faulty or too few sample parts being available.

(6) The machine performance, service life and suitability of our equipment are dependent on the quality and uniformity of the parts to be processed, which the buyer should check before the commissioning and after, e.g. with part feeding faults that occur suddenly. Insofar as there are discrepancies compared to the original parts, we must be informed if this immediately. The costs of any reconstructions, alterations or readjustments that may be necessary as a result of this shall be borne by the customer. We accept no responsibility for the production performance achieved in the final machine deployment, particularly with operating personnel. This also applies even if we have cited guide values in the proposal submitted. The buyer therefore bears the responsibility themselves that the original planned production performance can be achieved through the selection and use of a suitable operating and maintenance team.

## IX. GUARANTEE AND INDEMNITY

We assume liability for material defects pertaining to the delivery with the exclusion of further claims - without prejudice to section X, as follows:

(1) All parts affected are to be repaired or replaced free of charge according to the reasonable discretion of the supplier where these faults have arisen within 12 months of single-shift usage from the date of acceptance - or within 6 months in the case of multiple shift use - in particular due to faulty design, poor materials or inadequate execution - rendering the delivery unusable or only usable with major impairment. We must be informed in writing immediately upon detection of such defects. Costs, comprising costs of the replacement parts including shipping, incurred directly through the rectification of defects or replacement delivery shall be borne by STÖGER AUTOMATION GmbH - where the objection transpires to be warranted. In addition STÖGER AUTOMATION GmbH shall also bear the costs of any posting of STÖGER specialist personnel necessary at the place of use. Services will be performed within our normal work times (Monday - Friday). STÖGER AUTOMATION GmbH will not bear the costs for travel, accommodation, extra costs for overtime, night-shifts, working at weekend or working during holidays. These will be charged in accordance with the actual expenditure incurred under our service conditions applicable at the time.

(2) If shipping, installation or commissioning of the delivery item is delayed through no fault of our own, then our liability with respect to the buyer shall be voided no later than 12 months after the transfer of risk. The same applies in the case where the delivery is not to the buyer themselves but rather to a third party, who will sell or deliver our delivery item to the end customer at a later point in time and at their own expense.

(3) In the case of defects in essential bought-in components (all electrical, electronic and pneumatic control elements), which we cannot eliminate due to licensing laws or practical reasons, we will either assert our warranty claims against the manufacturer and supplier in favour of the buyer or will assign this to the buyer - the choice lies with the buyer. In the case of these kinds of defects, warranty claims against us exist under other conditions and in accordance with these general terms of delivery only if the legal proceedings of the aforementioned claims against the manufacturer and suppliers were unsuccessful or are futile, for example due to insolvency. During the duration of the legal battle, the period of limitation of the concerned warranty claims of the buyer is suspended.

(4) No warranty shall be accepted for damages incurred on the buyer's premises due to the following reasons: Improper or unintended use, faulty installation and/or commissioning by the buyer or third parties, natural wear and tear, incorrect or careless handling as well as maintenance or unsuitable operating materials, air treatment units and lubricants. The buyer is obligated to precisely observe our operating and maintenance instructions.

(5) Subsequently, our liability is excluded if the buyer has supplied us with faulty materials and parts as well as if they have stipulated third party designs for the execution of the order. Liability for the consequences arising from improper alterations carried out without approval or repair works carried out by the buyer or a third party is likewise excluded.

(6) In order to undertake the repairs or replacements which appear to be necessary the buyer shall notify us and allow sufficient time and opportunity to rectify defects or replace parts, otherwise we shall be released from any liability arising in this regard. The buyer must ensure that our installation personnel are able to start with the necessary work immediately after they arrive. If necessary, the buyer must provide qualified ancillary personnel to help at no cost to us. The waiting time and secondary time for preparations and other miscellaneous services, which are not directly connected to the defective delivery item, provided by our installation personnel can be charged to the buyer. Only in urgent cases which pose a risk to industrial safety and to the prevention of disproportionately large damage (whereby we are informed of this immediately), or where we are delayed with the rectification of the fault, the buyer is entitled to rectify the defect themselves or have it rectified by a third party and demand that we reimburse the costs incurred accordingly.

(7) The warranty period for the replacement part and the repair is three months, but no less than the original warranty period offered for the delivered object. The liability period for defective parts of the delivered goods is extended by the duration of the business interruptions caused by the remedial work. Replaced machine parts will be retained by us as a matter of principle or are to be returned by the buyer free of charge. They become our property.

(8) The vendor shall not be liable:

(a) In cases of simple negligence of his organs, legal representatives, employees or other vicarious agents;

(b) In the case of gross negligence of non-senior executives or other vicarious agents; inasmuch as it does not concern a breach of duties which are significant for the agreement.

Significant contractual duties include the obligation to deliver and install in a timely fashion, goods that are free of essential defects as well as advisory, protective and duty of care obligations that enable the buyer to use the item delivered in the contractually prescribed manner or whose purpose is to protect the lives and health of the buyer's personnel or third parties or to protect the buyer's property from significant damage.

(9) Insofar as the supplier is liable for compensation for damages based on § IX section 9, this liability is restricted to damages that the supplier foresaw as a possible consequence of a contractual infringement, or which he must have been able to foresee with the exercising of reasonable care and attention, taking into account the conditions that were known to him or that he should have known, at the time when the contract was concluded. Furthermore, indirect damage and consequential damage resulting from defects in the item supplied are only subject to compensation insofar as such damage is typically to be expected when using the item delivered as intended.

(10) In the event of liability for simple negligence, the supplier's obligation to make compensation for property damage and personal injury is limited to an amount corresponding to the current cover sum of his product liability insurance or third party insurance, per claim, even if this is a case of infringement of obligations essential to the contract.

## **X. LIABILITY AND LEGAL DEFECTS**

(1) If use of the delivery item leads to a domestic infringement of industrial property rights or copyrights then the supplier shall procure the right as a matter of principle - at his own costs - for the customer to continue using the item or modify the delivery item in a way that is acceptable to the customer, such that the infringement of rights is no longer effective. If this is not possible under financially appropriate conditions or within an appropriate period of time then the customer is entitled to withdraw from the contract. Under the aforementioned conditions the supplier is also entitled to withdraw from the contract.

Furthermore, the supplier shall release the customer from indisputable or legally effective demands of the copyright holder.

(2) The obligations of the supplier cited in clause X. section 1 shall be final and are subject to liability per § IX. section 9 and section 10 in the event of industrial property rights or copyrights being violated.

They exist only if

- the buyer informs the supplier immediately of any claims pertaining to infringements of copyrights or industrial property rights,
- the buyer provides the supplier with an appropriate level of support in defending against the claims  
or enables the supplier to carry out the modification measures per § X. section 2,
- the supplier retains all defence options including out-of-court settlements,
- the legal defect is not related to an instruction issued by the buyer and
- the legal infringement was not caused by the buyer independently modifying the delivery item  
or using these in a manner contrary to the contract.

## **XI. SOFTWARE UTILISATION**

Insofar as software is included in the scope of deliverables, the customer is granted the non-exclusive right to use the software supplied including the pertinent documentation. It is provided for use with the respective delivery item. Use of the software on more than one system is prohibited.

The customer is only permitted to copy, modify or translate the software, or convert it from object code into source code to the extent permitted by law (§ 69 a ff. UrhG [German copyright act]). The customer is obligated not to remove or alter the manufacturer's information

- in particular the copyright remarks - without prior agreement from the supplier.

All further rights to the software and the documentation including copies thereof remain the property of the supplier or software supplier. The issuance of sub-licences is not permitted.

## **XII. PLACE OF FULFILMENT AND JURISDICTION**

(1) Our business headquarters in Koenigsdorf is the place of fulfilment for deliveries and payments.

(2) For all disputes arising from this contractual relationship, if the buyer is a commercial party, a public law entity or a public body, the proceedings should be raised at the court responsible for our headquarters. We are also entitled to issue proceedings in the court having jurisdiction at the buyer's head office.

(3) Our place of jurisdiction is Wolftratshausen.

## **XII. INEFFECTIVENESS OF INDIVIDUAL CLAUSES AND APPLICABLE LAW**

(1) Should one of these conditions prove to be or become ineffective, in part or in whole, this shall not affect the remaining conditions in this contract.

(2) These general terms and conditions include all laws and obligations for the contractual parties. Other agreements or declarations of intention from the contractual parties shall be made in writing to be legally valid. This also applies to a change to the written form clause.

(3) In the absence of other agreements the contract is subject to the civil code of the Federal Republic of Germany.