

## **Terms of sale of Dieter Drach Ltd.**

### **§ 1 General scope**

(1) The present General Terms of Sale (GTS) apply to all our business relationships with our client (hereinafter "customer"). The GTS shall only apply if the customer is an entrepreneur (§ 14 BGB), a legal entity under public law or public law special fund.

(2) The General Terms apply specifically to contracts for the sale and/or the supply of goods (hereinafter also: "goods"), regardless of whether we produce the goods ourselves or buy from suppliers (§§ 433, 651 BGB). The conditions apply in their current version as a framework agreement for future contracts for the sale and / or the supply of goods to the same customer, without us having to refer to each individual case on it.

(3) Notice conditions apply exclusively. Differing, conflicting or additional terms and conditions of the customer will only be part of the contract, as we have explicitly agreed to them. This requirement applies in every case, for example, even if we are aware of the conditions of the purchaser, the delivery is unconditionally executed to him.

(4) In some cases, individual agreements made with the customer (including side agreements, amendments and changes have) always take precedence over these GTS. The contents of such agreements are a written contract and our written confirmation.

(5) Relevant statements and advertisements, which according to the contract by the buyer submits to us (e.g. deadlines, defects, notice of cancellation or reduction), need to be in written form.

### **§ 2 Conclusion**

(1) Our offers are non-binding.

(2) The order of goods by the customer is considered a binding contract offer. Provided that the order does not otherwise, we are entitled to accept this offer within ... days / weeks after his accession.

(3) The assumption can only be explained by the customer in written form (e.g. through order confirmation).

### **§ 3 Delivery time and delivery delay**

(1) The delivery period is agreed individually or specified by us in accepting the order.

(2) If we are not able to fulfil binding delivery times for reasons that we are not responsible for, (service is not available), we will inform the customer of this immediately and announce a new delivery date. If the service is not available within the new delivery date, we shall be entitled to all or partially withdraw from the contract; a payment made by the customer we will immediately refund. The late deliveries of our supplier are in this sense a case of impossibility of performance, when we have concluded a congruent cover transaction. Our legal rights of withdraw and termination rights and the statutory provisions relating to the execution of the contract to the exclusion of obligation (e.g. impossibility or unreasonableness of the service and / or replacement) remain unaffected. Also unaffected remain the cancellation and termination rights of the customer in accordance to § 8 of the GST.

(3) The occurrence of a delay in delivery shall be governed by the law. In any case, however, a reminder is required by the customer.

### **§ 4 Delivery, transfer of risk, acceptance, delayed acceptance**

(1) Delivery is from stock, in which also the carrying out is. At the request and expense of the customer, the goods will be sent to another destination (sale). Unless otherwise agreed, we are entitled to decide for ourselves the type of dispatch (in particular transport company, way of dispatch, packaging).

(2) The risk of accidental loss and accidental deterioration of the goods shall pass to the customer latest at the transfer. At the dispatch of purchase, however, the risk of accidental loss and accidental deterioration of the goods and the risk of delay is already passed to the carrier, freight forwarder or other institution who execute the dispatch. If acceptance is agreed, this is prevailing for the transfer of risk. Also, in addition to an agreed reduction apply the statutory provisions work according to contract law. The transfer or acceptance is the same, if the customer is in delay of acceptance.

(3) If the purchaser is in delay of acceptance, he omits an act of cooperation or our delivery delays for reasons the customer is responsible for, we are entitled to compensation for the resulting damage including additional expenses (such as storage costs) request. We charge a flat rate compensation amounting to 1% per calendar week, but not more than 5% of the value of the delivery of goods to be delivered, beginning with the delivery period or - in the absence of a delivery period - with the announcement of readiness for dispatch. The proof of greater damage and our legal claims (especially compensation of additional expenses, adequate compensation, and termination) remain unaffected, but the flat rate is to be counted to further monetary claims. The customer is entitled to prove that not at all or only a minor loss has emerged as the above flat rate.

## **§ 5 Prices and payment**

(1) Unless otherwise agreed in individual cases, the rates, which can be requested from us at any time, apply to our applicable at the time of contract conclusion and indeed in stock, plus VAT.

(2) For mail order purchases (§ 4 para. 1) the purchaser shall bear the transportation costs from stock and the cost, in case he desires a transport insurance. Any customs duties, fees, taxes and other public charges are borne by the customer. Transportation and all other packaging according to the ordinance, we will not take back, they become property of the customer, except pallets.

(3) The purchase price is due and payable within 14 days of billing. The dispatch of the ordered machines happens only after receipt of the invoice amount to the seller (delivery versus payment). (4) Upon expiry of the above payment, the buyer is in default. The purchase price is to pay during the delay on current interest rate of 8 percentage points above the base rate of the ECB. We reserve the right to assert further delay damage. For traders is our claim to the commercial due interest (§ 353 HGB) unaffected.

(5) The purchaser shall be entitled to set-off or retention only if his claim has been legally established or uncontested. When defects in delivery § 7 para. 6 remains unaffected.

(6) If, after conclusion of the contract we see, that our claim for the purchase price due to the inefficiency of the customer is at risk (e.g. by application to open insolvency proceedings), we are entitled under the statutory regulations to withhold performance and - if necessary after a deadline - to rescind the contract (§ 321 Civil Code). For contracts about the production of unreasonable things (custom made), we can explain the resignation immediately; the legal regulations on the dispensability of the deadline shall remain unaffected.

## **§ 6 Retention of title**

(1) Until payment in full of all our present and future claims arising from the purchase contract and an on-going business relationship (secured claims), we retain the title to the sold goods.

(2) The goods under retention of title may not be pledged to third parties nor transferred as security, until full payment of the secured claims. The customer must inform us immediately in writing if and to the extent that third parties have access to our goods.

(3) In the case of breach the contract by the customer, especially for non-payment of the purchase price due, we may withdraw from the contract in accordance with the laws and/or may demand back the goods on the basis of retention of title. The demand does not automatically mean the statement of resignation; we are rather entitled to claim return of the goods and to reserve for the resignation. If the customer pays the purchase price due not, we may assert these rights only if we before have set unsuccessfully a deadline of reasonable period for payment for the customer or such a deadline is not necessary according to the statutory provisions.

(4) The purchaser is entitled to sell and/or to process the goods under retention of title in the ordinary course of business. In this case the following provisions apply in addition.

(a) The retention of title extends at their full value to the products, which caused by processing, mixing or combining our parts, where we are as a manufacturer. If then right of property at the event of processing, mixing or combining goods of third parties consist, we acquire co-ownership in proportion to the invoice value of the processed, mixed or combined goods/parts. In other respects, the resulting product is the same as for delivered under retention of parts.

(b) Claims against third parties arising from the resale of the parts or the product, the customer already now assigns to us as a whole or as to the extent of any ownership share set out above to our security. We accept the assignment. The duties of the customer listed in paragraph 2 apply in respect of assigned claims.

(c) To collect the debt the customer is authorized next to us. We undertake not to collect the debts, as long as the customer meets his payment obligations to us, as long he is not in delay of payment, as long there is no petition to open insolvency proceedings and no other deficiency in his solvency is present. If this is the case, the we can demand, that the customer notifies us of this assigned claims and their debtors, provides all information necessary for collection, hands over all relevant documents and notifies the debtors (third parties) about the assignment.

(d) If the realizable value of our claims by more than 10%, we are requested by the releasing client securities at our discretion.

## **§ 7 Warranty claims of the customer**

(1) The rights of the customer in material and legal defects (including wrong-and under-delivery and improper assembly or improper installation manual) apply the statutory provisions, insofar as the following otherwise specified. In all cases the special legal requirements for final delivery of the goods to the consumer (in accordance with suppliers' recourse §§ 478, 479 BGB) be unaffected.

(2) The basis of our liability for defects is mainly the reached agreement about the quality of the goods. As

agreement on the nature of the goods apply all product descriptions, that are object of the individual contract; it makes no difference whether the product description comes from the customer, the manufacturer or by us. We sell used exclusively refurbished Index GB machines 30, 42, 65 and 100 and also used and reconditioned spare parts for the Index-GB machine. The product are used equipment or spare parts. In this respect, the quality of the goods also largely determined by the fact that it is a used machinery or spare parts.

(3) If the composition has not been agreed, is according to the applicable legal regulations to assess, if a defect can be find or not (§ 434 paragraph 1 sentence 2 and 3 BGB). For public statements by the manufacturer or other third parties (e.g. advertising claims), we assume no liability.

(4) The warranty claims of the customer presuppose that his statutory inspection and complaint (§ § 377,381 HGB) is fulfilled. Evident during the investigation or later is a defect, we shall immediately be informed in written form. The display is immediately, if it occurs within two weeks, the timely dispatch of the notification within this deadline is sufficient. Regardless of this examination and notification the customer has to display obvious defects (including wrong and short delivery) within two weeks of delivery in writing form, although here the timely dispatch of the notification within this deadline is sufficient. If the buyer fails proper investigation and / or defects, our liability for the unreported defect is excluded.

(5) If the delivered goods are defective, we can first choose whether to subsequently perform by removal of the defect (improvement) or to deliver a defect-free (replacement). Our right to the selected type of refuse to remedy under the statutory requirements remains unaffected.

(6) We are entitled to make the due fulfilment of the condition that the customer pays for the purchase price due. The customer is entitled to withhold a part of the purchase price in relation to the appropriate deficiency.

(7) The customer has to give us that due to the subsequent time and opportunity, especially the rejected goods to pass verification purposes. In the case of a replacement delivery the customer has to return the defective in accordance with statutory requirements.

(8) We take the costs for the purpose of inspection and rectification, in particular transport, travel, work and material costs, unless there is a deficiency. Where, however, a lack of demand removal of the Customer is unjustified, we may ask the related expenses reimbursed by the customer.

(9) In urgent cases, such as danger to operational safety or to prevent excessive damage, the customer has the right to remedy the defect himself and demand spare from us according to the objectively necessary expenses. From such a self-service, we are immediately, if possible in advance be notified. The right of self does not exist if we would be entitled to refuse an appropriate remedy under the statutory regulations.

(10) If the subsequent performance has failed or a remedy of the buyer to be set in reasonable time is unsuccessful or expired in accordance with statutory requirements is not necessary, the customer may rescind the purchase agreement or reduce the purchase price. When there is a minor defect, there is no right of withdrawal.

(11) The customer's claims for damages or reimbursement of expenses are only made in accordance with § 8 and otherwise are excluded.

### **§ 8 Other liability**

(1) Unless these conditions, including the following conditions have no further results, we are liable for a breach of contractual and non contractual obligations under the relevant statutory provisions.

(2) We are liable for damages - on whatever legal grounds - in case of intent or gross negligence. In case of simple negligence, we are liable only

a) for damages resulting from injury to life, limb or health,

b) for damages resulting from breach of a contractual obligation (an obligation which makes the proper execution of the contract in the first place and on its compliance with the treaty partner can trust and may rely); in this case our liability is limited to the replacement of the foreseeable, typically occurring damage.

(3) Arising from paragraph 2, limitations of liability do not apply if we maliciously concealed a defect or have given a guarantee for the quality of the goods. The same applies to claims of the customer under the Product Liability Act.

(4) Due to a breach of duty which is not a defect, the customer may only terminate or withdraw, if we are responsible for the breach of duty. An unrestricted right of termination by the customer (especially section. § § 651,649 BGB) was excluded. In addition apply the statutory requirements and legal consequences.

### **§ 9 Limitation**

(1) Notwithstanding § 634a paragraph 1 No. 1 BGB, the general limitation period for claims arising from property and defects is for 6 months from transfer of risk. If an acceptance has been agreed, the statute of limitations begins with acceptance.

(2) If the goods are a building or a thing, that according to his usual use was used as a building and has caused defects (building materials),the limitation period is according to the legislation 5 years from delivery

(§ 438 Par.1 No.2 BGB) . Also special legal provisions for collateral rights (§ 438 Par.1 No.2 BGB) , with fraudulent intent (§3 438 Par.3 BGB) and for claims in the suppliers responsibility for final delivery to a consumer (§ 479 BGB) may unaffected.

(3) The foregoing limitation shall apply to contractual and non-contractual claims for damages of the customer, based on a defect, unless the application of the regular statute of limitations (§ § 195,199 BGB) results in individual cases in a shorter period. The limitation of the Product Liability Act remain in each case unaffected. Otherwise only the statutes of limitations apply to the claims for damages according of the customer according to § 8.

#### **§ 10 Governing law and jurisdiction**

1. For these conditions and all legal relationships between us and the customer is the law of the Federal Republic Germany under exclusion of all international and supranational (contractual) legal systems, especially the UN purchasing law. The conditions and effects of retention of title according to § 6 are governed by the law of the respective location of the thing, so far as it made the right choice in favour of the German law is prohibited or ineffective.

2. Our office in 74405 Gaildorf-Unterrot, Daimlerstr. 22nd is the exclusive - and international - jurisdiction for all disputes, who arise directly or indirectly from the contracts. We are also entitled to take action at the general jurisdiction of the customer.

#### **§ 11 Severability clause**

Should one or more provisions of the foregoing conditions is or will be ineffective or unenforceable, the validity of the remaining provisions and other provisions of the contract is not affected. Invalid provisions shall be replaced by rules which have the same economic success as destination. The same applies to the regulation of contractual gaps

As of February 2010