

GENERAL TERMS AND CONDITIONS

The following Terms and Conditions are a translation of the German version and are construed according to German Law. If the English legal meaning differs from the German legal meaning, the German meaning shall prevail. The following terms and conditions only apply to commercial customers.

1. SCOPE OF APPLICATION

1.1

These terms and conditions shall apply exclusively. We do not accept any deviating or opposing terms and conditions, except if expressly agreed upon in writing. These terms and conditions shall also apply if we perform delivery without an explicit objection against deviating or opposing terms and conditions of our customer.

1.2

Unless otherwise agreed between the parties, these terms and conditions (in the respectively current version or, in case of any legal invalidity, alternatively in the version last handed over to the specific customer) shall apply to all subsequent transactions without any need of explicit reference there to or agreement there on at the conclusion of such transaction.

2. OFFER AND ACCEPTANCE

2.1

Unless otherwise specified, our offers are not legally binding and without engagement. Orders placed by the customer shall not be regarded as accepted until these have been confirmed by us in writing. Such order confirmation shall be solely decisive for the contract content.

2.2

The order shall constitute a binding offer which we may accept within two weeks after receiving the order.

2.3

Individual agreements with the customer (including amendments to the contract, supplementary agreements, side agreements as well as the warranties and presentations) made in individual cases prevail these general terms and conditions. The content of such agreements shall be - subject to the proof of the contrary - determined by a written contract or our written confirmation.

2.4

If any additions or changes as stated in para. 2.3 generate additional costs, the customer shall bear such additional costs. If such additions or changes cause a delay of delivery or production, the customer shall not be entitled to any damages caused by delay nor to any contractual penalties or other indemnities.

3. PRICES

3.1

Prices mentioned in the order confirmation are decisive. Unless otherwise agreed between the parties the prices are understood to be in Euro, exclusive of packaging, cargo, postal charges, insurance and other expenses plus the respective statutory value added tax valid at the time of invoicing.

3.2

We may demand proof of export if the goods are intended for export. We may debit the value-added tax afterwards if the export of such goods has not been verified.

4. DELIVERY

4.1

If, according to the concluded contract, we shall provide electronic files to the customer, we are only obliged to provide such files in the formats word, excel, tif, pdf, dwg, dxf, step or jpg. If the customer wishes to receive the files in other formats, the customer has to compensate us for the respective expenditures.

4.2

The time of delivery shall be governed by the agreements made in accordance with an order confirmation. If such an agreement has not been met, the delivery period shall be two weeks after the acceptance has been done. We are only obliged to comply with the applicable time of delivery, if all commercial and technical questions have been clarified, if the customer has fulfilled all its due obligations, and unless any change requests of the customer have to be implemented after its acceptance. Otherwise, the delivery period shall be deemed extended accordingly. The aforesaid shall not apply if we are responsible for the delay.

4.3

If our non-compliance with the time of delivery has been caused by force majeure, by labor disputes or by other events outside our sphere of influence, the time of delivery shall be deemed extended accordingly. This shall also apply to cases in which our suppliers did not deliver to us, duly provided we have concluded a congruent covering transaction. We shall inform our customer immediately about any delays and, at the same time, communicate the expected new time of delivery.

4.4

The time of delivery shall be deemed to be met if - within such time period - the subject goods have left our factory, have been communicated to our customer to be ready for delivery or pick up. As far as a delivery is subject to a prior acceptance by the customer, the date of such acceptance shall be decisive, i.e. the declaration of readiness for acceptance (except in cases, in which the customer refuses such acceptance legitimately). If goods are lost or damaged during transportation the customer shall not be released from the payment of the invoice in any case. If the delivery or the acceptance of the subject good is delayed for reasons for which the customer is responsible, the costs incurred as a result of the delay, starting one month after notification of the readiness for delivery or acceptance, shall be borne by the customer.

4.5

Unless otherwise specified in the order confirmation delivery is understood ex works. Shipment and transport shall be made at the customer's costs and at the customer's risk. The risk shall pass to the customer as soon as the goods leave our premises or in case of collection by the customer, the customer gets in default of acceptance. Should acceptance be agreed upon, the acceptance shall be decisive for a transfer of the risk. The day of acceptance shall also be decisive if the customer declines the acceptance without justification. Upon explicit demand of the customer and at the customer's expenses, we offer insurance against transport damage at our best reasonable discretion. We shall be informed about any deviations from the delivery notes or the invoice immediately after receipt of the goods. The packaging will be charged against cost price and will not be taken back.

4.6

We shall have the right to reasonable delivery in instalments as far as the remaining parts are delivered within the stipulated delivery time and as far as it is not unreasonable for the customer. Deliveries in instalments, which are made within the delivery time, may be invoiced separately.

4.7

The occurrence of a delay in delivery is determined according to the statutory regulations. In any case a reminder by the customer is absolutely necessary. Should delivery by us be delayed we will only be liable for the damage caused by the delay proven by the customer in the case of gross negligence. In the case of minor negligence, our liability for the damage due to the delay will be limited to compensation of 0.5% for each full week of the delay, but maximum total 5% of the price of the portion of the delivery batch which was unable to be properly deployed due to the delay with the right reserved on our part to prove that no, or only limited, loss or damage has been incurred. Moreover, we are liable for delay damages caused by simple negligence only as from the date when the appropriate final deadline fixed by the customer expires.

4.8

Customers may withdraw from a contract by reason of a failure to meet the time for delivery only after they have fixed an appropriate final deadline under threat of rejection for us and delivery has not been effected within this period. This provision does not apply when, in accordance with § 323 para. 2 BGB, the fixing of a time-limit is dispensable.

5. PAYMENT TERMS

5.1

Unless otherwise stated in the order confirmation the purchase price is due and payable within 14 days from the date of the invoice and delivery respectively acceptance.

5.2

If the customer fails to meet his obligation to pay within the payment period, upon expiration of this period and without any further reminders, he shall be in default. During default the applicable default interest rate will be charged on the purchase amount. We reserve all rights to claim further damages for delay. Reminder fees shall be calculated according to the actual expense involved. Our claim for the commercial maturity interest (§ 353 HGB [German Commercial Code]) against merchants remains unaffected.

5.3

If, after the contract has been concluded, it becomes apparent that our claim to the purchase price is endangered as a result of insufficient financial status (e. g. as a result of an application to open insolvency proceedings), we shall then be entitled to withdraw from the contract (§ 321 BGB) in keeping with the stipulations relating to refusal of performance - possibly after setting a time limit. In case of contracts concerning the production of unreasonable objects (individual productions), we may declare the cancellation immediately; the statutory regulations concerning the lack of necessity to set a deadline remain unaffected.

5.4

The customer will be only entitled to rights set-off, if his counterclaims are found absolutely, are undisputed or are recognized by us; in addition the customer is authorized to practice the right of retention in so far as his counterclaim is based on the same contractual relationship.

5.5

In the event of clause 5.2 and 5.3 we reserve the right to suspend further deliveries. This also applies for spare parts, change parts, services and service calls, etc.

6. ACCEPTANCE

If a preliminary acceptance and/or is agreed between the parties, it shall take place at our premises.

7. LIABILITY FOR DEFECTS

7.1

If the customer is a merchant, claims for defects by the customer provide that the customer met its inspection and reproof obligations according to § 377 HGB (German Commercial Code) duly. In the event that a defect is revealed during the inspection or at a later date, we must be notified in writing immediately without any undue delay. Evident defects must always be reported in writing, no later than 5 working days after receipt of the goods. Defects, which cannot be identified by the performance of a proper examination, shall be reported in writing immediately after the discovery of the defect. If the customer fails to carry out the proper inspection and/or report of defects, our liability shall be excluded according to the statutory regulations for the defect which has not reported or has not been reported in time or not properly. Excluded from any warranty rights are: wear and tear parts, damages caused by inappropriate or improper handling of the customer, faulty installation or operation by the customer or any third party, excessive wear, natural wear and tear, faulty or negligent handling, inadequate maintenance, unsuitable equipment, chemical, electrochemical or electrical influences, if not contractually presumed and/or not attributable to a fault of ours. We also point out, that we only accept warranty in terms of material and function of parts which in geometry, material composition and surface texture comply with the design and sample parts, provided before the contract was concluded. This also applies if drawings of parts were provided.

7.2

The expenses necessary in connection with examination and supplementary performance, in particular as regards transport, travel, labour and materials, shall be borne by us if a defect does indeed exist. In all other cases we reserve the right to debit the customer with the costs incurred hereby (in particular examinations and transport costs), unless it was not recognizable for the customer, that the report of the alleged defect was unjustified.

7.3

Claims of the customer for damages or reimbursement of futile expenses are subject to the following §8 and are otherwise excluded.

8. OTHER LIABILITY

8.1

In the event of wilful misconduct and gross negligence we shall be fully liable for damages, irrespective of which legal grounds they are based on. We shall be liable for slight negligence only in the following cases:

- for damages resulting from the injury to life, body or health;
- for damages resulting from the breach of fundamental contractual obligations (obligations, which are essential and necessary to be performed for the proper execution of the contract and on which the customer regularly relies and may legitimately rely upon); in such case, however; our liability shall be limited to the compensation of foreseeable damages that typically occur;
- for claims under § 478 BGB.

8.2

The foregoing limitations of liability shall not apply to fraudulent concealment of defects, absence of an expressly guaranteed quality, as well as, to liability under the German Product Liability Act.

8.3

Any fault of our representatives or vicarious agents shall be deemed to be attributable to us.

8.4

The legal provisions on burden of proof shall remain unaffected by the foregoing provisions.

9. LIMITATION OF LIABILITY IN TIME

9.1

Unless otherwise provided herein warranty claims shall be time-barred after 12 months starting with – in case of sale of goods – delivery and in case of a work contract starting with acceptance. This period is also valid for contractual and non-contractual claims of the customer based on a defect of the goods.

9.2

The statutory periods of limitation apply in the following cases:

- for damages resulting from willful misconduct or gross negligence,
- for damages resulting from the injury to life, body or health;
- for a liability under the German Product Liability Act;
- as far as we fraudulently concealed any defects;
- as far as we have given a guarantee;
- as far as the contractual object is a building or an object that, in conformity with its customary manner of utilization, has been used for a building and which caused the defect (building material);
- for claims of recourse against the supplier in final supply to a consumer (§ 479 German Civil Code).

10. RETENTION OF TITLE

10.1

We retain title to all delivered goods until the customer has fully satisfied all payment obligations arising out of the business relationship.

10.2

If the customer is in default of payment or if it becomes apparent that our claims for payment are endangered by the customer's inability to perform such payments, we may claim surrender of the goods subject to reservation of title. Any demand for the return of goods shall not be deemed to include a simultaneous declaration of withdrawal; we shall rather be entitled to claim return of the goods and to reserve the right of cancellation. If the customer does not pay the purchase price due, we may assert these rights only if we have first set the Customer an appropriate time limit for payment without result or if setting a time limit may be dispensed with according to the provisions of law.

10.3

In the event of an attachment, seizure or other third-party intervention the customer shall notify us immediately thereof. The customer shall bear all costs necessary to interrupt such intervention and to repossess the goods delivered, to the extent such costs cannot be collected from such third party.

10.4

Subject to revocation for good cause, the customer shall be have the right to dispose of the delivered goods in the ordinary course of business. In particular it shall not be permitted to pledge the goods or use them as securities. The customer may only pass on goods subject to retention of title to any third party if the customer meets its obligations under the business relationship with us in due time. In the event of resale, the customer already assigns to us hereby all and any claims from such resale, in particular purchase price claims, but also other claims relating to the sale, up to the total amount of our invoice (including value-added-tax). Subject to revocation for good cause, the customer shall be entitled to collect the assigned claims on a fiduciary basis. Selling such claims in the sense of real factoring requires our prior consent. We may – for good cause - notify third-party debtors of the assignment of claims also on behalf of the customer. Notification of the assignment to a third-party debtor shall end the customer's right to collect the claim. If the right to collect the claim is revoked, we may require the customer to disclose to us the claims assigned as well as the debtors thereof, to provide us with all information required for collection, to hand over all relevant documents and to notify the debtors of the assignment. Good cause in the foregoing sense shall include but not be limited to the customer being in default of payment, the customer having suspended his payments, in the event of insolvency proceedings having been initiated against him, bills having been protested or in the event of evidence indicating an over-indebtedness or imminent insolvency of the customer.

10.5

Processing and/or transformation of any delivered goods by the customer shall always be carried out on our behalf. We shall be deemed to be the manufacturers in the sense of § 950 BGB (German Civil Code), without any further obligation. If the delivered goods are processed together with other materials, we shall acquire joint title to the newly produced goods in proportion of the value of the invoiced amount to the purchase price of the other processed materials. In all other respects, the provisions applicable to the goods delivered shall also apply to the newly produced goods by such processing.

10.6

If the goods delivered are combined, mixed or blended with movable goods of the customer in a way that the customer's goods are considered to be the main item, the customer already hereby assigns to us joint title to the main item in proportion of the value of the goods delivered to the value of the other combined, mixed or blended goods. If the goods delivered are combined, mixed or blended with movable goods of a third party in a way that the goods of the third party are considered to be the main item, the customer already hereby assigns to us its payment claims against the third party to the amount of the sum total of the invoice relating to the goods delivered. The newly produced goods by combining or mixing, the title respectively joint title thereto as well as the assigned payment claims pursuant to the foregoing paragraph shall serve to secure our claims in the same way as the goods delivered themselves.

10.7

If or to the extent that retention of title or an assignment of claims is ineffective or unenforceable due to mandatory provisions of foreign law, any security comparable to retention of title or assignment of claims applicable shall be deemed as agreed. If the assistance of the customer is required thereto, the customer shall take all steps necessary in order to establish and maintain such security.

10.8

The customer undertakes to adequately insure all goods subject to retention of title at its expense and to our benefit against fire, breakage and water damage as well as against theft and burglary. In the event of a claim, as early as with the present, the customer shall hereby assign to us his claims arising from such insurance contracts. We hereby accept such assignment.

10.9

Insofar as maintenance and inspection work is required on our separate property, our customer is committed to timely perform such work at his own expense.

11. INTELLECTUAL PROPERTY RIGHTS

11.1

To the extent that software and other electronic data are included in the scope of delivery, the customer is granted a non-exclusive right to use the delivered software, including its documentation and the data, only for our own and internal purposes, whereas the usage right is unlimited in terms of time, but limited solely to the contractually intended use in connection with the delivered goods. The usage of the software is limited to one system. Sublicensing is not permitted.

11.2

The customer commits himself not to remove the manufacturer's information, in particular copyright notices, or to modify it without prior expressed consent.

11.3

All other rights to the software and the documentation and data including the copies remain with us or with the software supplier.

11.4

We retain ownership and copyrights of samples, cost estimates, drawings, and information of a physical and nonphysical nature – also in electronic form. This applies, in particular, to layout design drawings of the respective machine and the electronic files provided. The provision of detailed drawings is under no circumstances one of our performance obligations. Such detailed drawings shall always remain with us. The aforementioned documents may not be made available to third parties and may only be used by the customer for the intended purpose of the contract, in particular may not be used by the customer to manufacture the goods itself or let them be manufactured by third parties.

12. CONFIDENTIALITY

All business or technical information made available to the customer by us, are as long as and so far as they are not demonstrably publicly known, to be kept secret from third parties and may be made available to third parties only with our written consent, whereas the receiving third party shall be bound to secrecy as well. The customer may use this information only in connection with the order or the later use of the delivered good itself, but only in accordance with the order. Upon our request, all information that we made available must be returned to us or must be destroyed without undue delay. Information, within the meaning of this secrecy obligation, shall encompass all data, plans, programs, knowledge, experiences, know-how; irrespective of the nature of the recording, storage or transmission, and regardless of whether this information is expressly or impliedly confidential.

13. APPLICABLE LAW, PLACE OF PERFORMANCE AND JURISDICTION

13.1

The contractual relationship shall be exclusively governed by German law. The UN Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

13.2

Place of performance shall be our company's principle place of business in 75248 Ölbronn-Dürrn, Germany.

13.3

If the customer is a merchant or a commercial customer within the meaning of § 14 BGB (German Civil Code), our company's principal place of business shall have exclusive jurisdiction for both parties for all legal disputes arising out of this contractual relationship. At our choice, we may also bring a legal action to the courts at the customer's principal place of business.

Last revision - October 2017

AFT Automation GmbH
Carl-Zeiss-Str. 6
75248 Ölbronn-Dürrn
Germany

Phone: +49 7237 - 426 0
Fax: +49 7237 - 426 66
Email: info@aft-automation.de
Home: www.aft-automation.de

Sparkasse Pforzheim Calw
IBAN: DE72 6665 0085 0008 9620 90
BIC: PZHSDE66XXX

CEO: Sebastian Hartkopf