

# General sales terms and delivery conditions

## of Tambula Textilmaschinenteile GmbH

### **§ 1. General**

1. Our offers are subject to change. Our general sales terms and delivery conditions shall apply exclusively. We will not accept any buyer's terms and conditions contrary to, or deviating from, our sales and delivery terms unless expressly agreed by us in writing. Our sales and delivery terms shall apply also when we make a delivery to the buyer although being aware of the fact that some of the terms or conditions of the buyer are contrary to, or deviate from, our sales and delivery terms. The buyer must not assert rights neither from his terms of sale and delivery nor from his commercial letters.
2. Our sales and delivery terms shall only apply to traders, legal persons under public law or special funds under public law.
3. Our sales and delivery terms shall also apply to all future business transactions with the buyer.

### **§ 2. Proposal /conclusion of a contract/ contract documents**

1. Proposals, specifications for tenders and related declarations made by us before the placement of an order are made without commitment. This shall also especially apply to figures, illustrations, declarations of weight and measurement.
2. A contract shall only be concluded after a written order confirmation has been received by the buyer.
3. We reserve the intellectual property rights for figures, illustrations, dimensioned sketches and other documents in connection with this contract which have been handed over to the customer or disclosed to him. They must not be made at the disposal of third parties and the buyer must not hand them on to third parties without our explicit consent.

### **§ 3. Prices**

1. Unless stipulated otherwise in the confirmation of order our prices are "ex works"
2. The statutory VAT is not included in our prices. It will be included in the invoice as a separate item at its statutory amount on the date of invoicing.
3. Carton packing is invoiced at cost price and it is credited with 2/3 of the invoiced value after it has been returned carriage paid in good condition within 14 days.
4. Unless stipulated otherwise the Buyer shall bear the costs for packing and shipment.
5. Non-returnable package can be returned to us for disposal. Refunding the packing costs is not possible. The buyer shall bear the costs for the return shipment.

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### **§ 4. Terms of payment**

1. Payment of our invoice amounts shall be effected within 10 days of the invoice date with 2% discount or net cash within 30 days.
2. Invoice amounts under € 10.50 as well as claims resulting from repairs are payable net cash.
3. If the customer should fail to pay our invoices within 30 days from the invoice date, we shall charge default interest at a rate of 2 % over the discount rate of the Deutsche Bundesbank, however 1% per month at least.
4. The payment is due without the sending of reminders (§ 284 par. 2 BGB (German Commercial Code)). The buyer defaults 30 days after receipt of the invoice at the latest. If the buyer defaults he must pay reminder fees amounting to €4. -- for every written reminder.
5. The withholding of payments or offsetting of potential counterclaims is not permissible other than in the case of recognised or legally determined counterclaims.

### **§ 5. Delivery time /delivery obligations / delivery**

1. Delivery times are only approximate times. Fixed dates must be confirmed separately. Exceeding the delivery times does not authorize the buyer to withdraw from the contract or to claim damages for non-performance. We are not liable for supply and service disorders caused by force majeure, breakdowns and adjustment work, lack of raw or auxiliary material or manpower, especially in cases of strike and lockout. We are only obliged to deliver the goods after the receipt of a written order confirmation.
2. If the buyer becomes unworthy of credit or defaults in payment or if he suffers a financial collapse we shall have the right to withdraw from the contract. This also applies to orders which have been confirmed by us in writing, but which, however, have not yet been delivered. Compensation of the buyer is excepted in such cases.

### **§ 6. Dispatch**

1. Unless agreed otherwise delivery shall be affected "ex works". If the dispatched goods are handed over to the buyer or to the carrier the risk shall pass to the buyer. If the dispatch is delayed due to circumstances for which the buyer is responsible, the risk passes to the buyer from the day when the goods are ready for dispatch. The notified readiness for shipment shall be evaluated equally with the completion.
2. Insurances are only contracted on demand of the buyer at his own expense in good time.

### **§ 7. Reservation of title**

1. All delivered goods remain the property of the seller up to the complete fulfilment of all commitments of the buyer towards the seller, now or in future, (including all balance claims of current account). The provision of drafts or cheques is not considered as payment as long as the drafts or cheques have

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not been paid. The same shall apply to the handing over of rediscounting securities.

2. The seller shall retain title to the goods. Processing or transformation shall always be performed for the seller as manufacturer, but without obligation for him. If the (co-) ownership of the seller shall lapse by reason of adjunction, it is already now agreed that the (co-)ownership of the buyer in the unitary physical object shall pass to the seller in the prorated value (value as per invoice). The purchaser shall hold the (common) property of the seller free of charge. Goods in which the seller has (co-) ownership shall be called conditional goods in the following.
3. The buyer is entitled to process and alienate the conditional goods in the ordinary course of business as long as he is not in default. Pledging or security transfers of ownership are not permissible. The buyer shall reserve his or her conditional title to the goods to which title is reserved vis-à-vis his or her customers. If the buyer resells the goods to a third party our title to the goods will lapse if the third party effects payment to the buyer or if the buyer has already effected payment to us. The buyer hereby assigns, for security purposes, all the claims resulting from or arising out of the sale or other legal courses (insurance, tort) of and regarding the retention merchandise. The seller entitles the buyer to collect the claims or receivables assigned to the seller in his own name and for his own account. Upon request of the seller the purchaser shall disclose the assignment and furnish the necessary information and documents.
4. The seller undertakes to transfer the title to the goods subject to retention of title to the buyer, insofar as the agreed purchase price for the goods has been paid and any requirement of securities for the agreed current account proviso does not exist anymore.
5. Our requirement for securities shall be void as soon as the value of the goods subject to retention of title exceeds the secured claims by more than 25%. If the assigned claims exceed the value of our claims by more than 25%, the buyer shall be entitled to the excess. The decision which of the securities are to be released upon the buyer's request lies with the seller.
6. In the event of the seizure of the conditional goods by third parties, the purchaser shall indicate the seller's title and inform the seller immediately. The customer shall bear all costs and damages.
7. In the case of conduct in breach of the agreement on the part of the buyer - in particular default in payment - the seller shall be entitled to take back the conditional goods or to demand the assignment of the buyer's rights of possession to third parties. The taking back as well as the levy of execution of the conditional goods by the seller shall not constitute a cancellation of the agreement, provided that the instalment law does not apply.

#### **§ 8. Warranty**

1. The buyer must inspect the supplied goods for defects, correctness and completeness without delay after their receipt. If the buyer finds out that the inspected goods do not correspond with the agreed condition of the goods or

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that they have defects, he must promptly notify the defects (§§ 377, 378 HGB (German Commercial Code)).

2. We must receive the notice of defects no later than 10 days after the arrival of the goods. The goods produced by us are only made of first class materials and with the highest possible precision. Their durability totally depends on the circumstances for which the consumers are responsible, that means inspection and elimination. The goods are moving parts for machines. Their assembly, setup, load and treatment are very important for the durability. A notice of defects can only be acknowledged if it can be proven that the delivered goods are defective. For the delivered goods the standard dimension tolerances are kept. If our goods are defective we can choose between change, reduction or compensation of equal goods. The buyer is only entitled to change or reduce the goods if our replacement delivery failed. For consequential damages or for damages which result from the breach of our duty we are only liable in the case of gross negligence (§ 463 BGB). Any warranty claims are excluded if the buyer has detected or if he could have detected the defect at the proper inspection of the goods.

#### **§ 9. Cancellation**

Even if the legal obligations are basically fulfilled there shall be no right for the buyer to cancel the contract because of a breach of duty which does not constitute a defect of the delivered goods, if we are not responsible for this breach of duty.

#### **§ 10. Place of delivery / jurisdiction / choice of law**

1. Place of delivery and place of jurisdiction is for both parties Rotenburg a. d. F. / Hessen. However we are authorized to start legal proceedings at the domicile of the buyer instead.
2. These conditions will be construed in accordance with German law, except the United Nations Convention on Contracts for the International Sale of Goods according to CISG.

#### **§ 11. Severability clause**

The inoperativeness of one or several clauses of said provisions does not affect the validity of the remaining provisions. An invalid provision is to be replaced by a valid provision that approximates the commercial purpose of the agreement and the presumed intent of the parties involved.