

Jürgens Maschinenbau GmbH & Co. KG Standard Terms of Purchase

1. General / Scope of application

1.1 The Standard Terms of Purchase of Jürgens Maschinenbau GmbH & Co. KG, referred to hereinafter as "Jürgens", shall apply exclusively; any conflicting or deviating terms of the supplier will not be accepted, unless Jürgens expressly agreed in advance and in writing to their application. Jürgens' Standard Terms shall also apply if Jürgens accepts delivery without reservation whilst having knowledge of supplier's terms that deviate from or conflict with Jürgens' Standard Purchase Terms.

1.2 Supplier's declarations and notices relating to the contract that have legal significance (e.g. setting deadlines, reminders, warning notices, withdrawal) must be made in writing, i.e. in written or electronic form (e.g. letter, email, facsimile). Legislative requirements relating to the form of such declarations and notices, and any other evidence, especially in case of doubt as to whether the person issuing the notice or declaration has the right to do so, shall not be affected.

1.3 Jürgens' Standard Purchase Terms shall apply exclusively vis-à-vis entrepreneurs, legal persons under public law or special funds under public law within the meaning of section 310 (1) BGB.

2. Offer / Offer documents

2.1 Jürgens' purchase order shall be binding no earlier than on written submission or confirmation. Prior to acceptance of our purchase order, the supplier must notify us of any evident errors (e.g. clerical mistakes and errors in calculation) and omissions in the order, including the order documents, for the purpose of correcting or completing them; otherwise the contract shall not be regarded as concluded.

2.2 Supplier is obliged to accept Jürgens' purchase order within a time limit of 2 weeks.

2.3 Jürgens reserves all proprietary rights and copyrights to all and any illustrations, images, drawings, calculations, data, data carriers made available, performance descriptions, specifications and other documents made available - hereinafter referred to as "Information"; such Information may not be made accessible to any third party without Jürgens' prior express approval. The information may be used only for manufacturing and/or processing Jürgens' order. On having completed order processing, the Information shall be returned to Jürgens without further request. Such Information must be kept secret from any third party.

3. Prices / Payment terms

3.1 The price shown in Jürgens' purchase order shall be binding upon the supplier. Unless agreed otherwise in writing, the price shall include delivery „free domicile“ including packaging. Packaging may be returned only if so agreed by special agreement.

3.2 The value added tax applicable by law must be shown separately in the invoice.

3.3 Jürgens will only process invoices if they show the order details specified in Jürgens' purchase order as required in the purchase order; the supplier shall be responsible for all consequences resulting from failure to comply with the foregoing obligation.

3.4.1 Unless otherwise expressly agreed in writing, Jürgens will pay the prices charged by the supplier within 14 days counting from delivery and receipt of the invoice with a 3% discount or net within 30 days from receipt of the invoice.

3.4.2 In the case of payment claims related to a work, Jürgens shall pay them net within 30 days from receipt of the invoice.

3.5 Jürgens shall not be obliged to pay interest from the due date. In the case of default on payment, the provisions of law shall apply.

3.6 Jürgens shall be entitled to set-off and retention rights, and the right to plead non-performance of the contract, to the extent provided for by law. In particular, Jürgens shall be entitled to retain due payments for as long as Jürgens is entitled to claims against the supplier for incomplete or defective performance.

4. Delivery and performance dates

4.1 The delivery date and/or date for performance stated in the purchase order is/are binding. The supplier is obliged to notify Jürgens without undue delay and in writing in the event supplier is unable to meet agreed delivery dates, whatever the reason.

4.2 Without Jürgens' prior written approval, the supplier is not permitted to entrust any third party (e.g. subcontractors) with the performance of the services the supplier owes. The supplier shall bear the risk of procurement with regard to its services, unless agreed otherwise from case to case (e.g. limitation to stock).

4.3 In the case of failure to perform on time, Jürgens shall be entitled to the claims provided for by law. In particular, Jürgens shall be entitled to claim damages for non-performance upon fruitless expiry of a reasonable grace period.

5. Delivery / passing of the risk / documents

5.1 Unless otherwise agreed in writing, delivery shall be free domicile. If the place of destination is not specified and nothing to the contrary is agreed, delivery shall be to Jürgens' place of business in Emsdetten. The place of destination, respectively, is also the place of performance for delivery and for any subsequent performance (obligation to deliver).

5.2 The supplier is obliged to precisely state Jürgens' order specifications on all shipping documents or delivery notes; if supplier fails to do so, delays in processing, for which Jürgens shall not be liable, will be inevitable.

5.3 Supplier shall grant Jürgens insight into the progress of the contracted services, e.g. of a work to be produced. Jürgens is entitled to inform itself about the progress of the contracted service by accessing all relevant documents (reports, descriptions, listings, manuals, etc.). The document shall be submitted to Jürgens on request and explained.

5.4 If the supplier is granted access through Jürgens to networks and/or data processing systems of Jürgens, the former may solely use such access for the purpose of fulfilling the individual purchase order, respectively. The supplier agrees especially in such cases to observe the provisions on secrecy set out under clause 2.3 and shall impose them on its employees and on any other third parties involved in implementation. Without having first obtained Jürgens' prior written approval, supplier is not entitled to copy, reproduce or disclose to any third party any of Jürgens' data that may be accessible to the supplier. Jürgens shall be liable only to the extent required by law for the proper functioning of access protection or malfunctions of the above-mentioned networks and data processing systems and for any damage resulting from their use.

5.5 The supplier undertakes to observe the relevant applicable provisions of law relating to data protection. The supplier shall hold Jürgens free and harmless at first request from and against third party claims arising from a violation of supplier's above obligation.

6. Defective goods

6.1 Unless otherwise agreed herein-below, the provisions of statutory law shall apply to Jürgens' rights in case of defects in quality and/or in title of the goods (including short delivery or delivery of the wrong goods, improper assembly, deficient assembly instructions, operating manuals, or user's manuals) and/or in case of other breaches by the supplier.

6.2 Supplier shall be liable under statutory law for ensuring in particular that the goods have the agreed quality and properties at the time the risk passes to Jürgens. In any case, the product descriptions that are the subject matter of the contract, or that have been incorporated into the contract in the same way as the present Standard Terms – in particular by designation or reference in Jürgens' purchase order –, shall qualify as an agreement regarding the quality and properties. It makes no difference whether the product description originates from Jürgens, from the supplier or from the manufacturer.

6.3 By way of derogation from section 442 para. (1), sentence (2) BGB, Jürgens is entitled without limitation to claims based on defects even where Jürgens failed to gain knowledge of the defect through gross negligence.

6.4 The obligation under commercial law to inspect and give notice of defects (sections 377, 381 HGB) shall be governed by the relevant provisions of statutory law subject to the following: Jürgens' obligation to inspect the goods shall be limited to defects that are clearly evident upon external examination, including the delivery documents, when Jürgens conducts its inspection of incoming goods (e.g. damage through transport, wrong or short delivery) or when Jürgens conducts its quality control by means of sample checks. Where the parties have agreed that acceptance of possession shall be required, there shall be no obligation to inspect the goods. In all other respects, the crucial condition is whether the circumstances in the case at issue warrant an inspection in the normal course of business. Jürgens' obligation to give notice of any defects discovered thereafter shall not be affected. Notwithstanding Jürgens' obligation to inspect, Jürgens' notice (notice of defect) shall be regarded as having been given without undue delay and within the due time if it is sent within 14 business days from discovery or, in case of evident defects, delivery.

6.5 Subsequent performance also means the dismantling of defective goods and renewed installation, provided the goods were installed in or mounted on another object in accordance with their nature and purpose; Jürgens' right under statutory law to claim reimbursement of associated expenses shall not be affected. The supplier shall bear the expenses required for inspection and subsequent performance even if it is later found that in fact there was no defect. Jürgens' liability for loss and damage in case of unjustified requests for a repair of the defect shall not be affected; in this respect, however, Jürgens shall be liable only if Jürgens recognised, or failed to recognise through its gross negligence, that there was no defect.

6.6 Notwithstanding Jürgens' rights under statutory law and the provisions set out under clause 6.5, the following shall apply: if the supplier fails to fulfil its obligation to perform subsequent performance – at

Jürgens' choice either by repairing the defect (subsequent remedial measures) or by delivering a defect-free item (replacement) – within a reasonable time limit set by Jürgens, Jürgens itself may repair the defect and require reimbursement of the expenses required for that purpose or require a corresponding advance payment. No time limit must be set if subsequent performance by the supplier fails or is not reasonably acceptable to Jürgens (e.g. due to special urgency, a risk to operational safety, or the imminent occurrence of disproportionate damage); Jürgens shall inform the supplier of such circumstances without undue delay, if possible in advance.

6.7 In all other respects, in the event of a defect in title or in quality Jürgens shall have the right to reduce the purchase price or to withdraw from the contract in accordance with statutory law. Furthermore, Jürgens shall be entitled to damages and reimbursement of expenses in accordance with statutory law.

7. Recourse to supplier

7.1 Jürgens has the unlimited rights of recourse within a supply chain that are laid down in statutory law (recourse to supplier, sections 445a, 445b and 478 BGB). In particular, Jürgens has the right to require that the supplier perform precisely the type of subsequent performance (subsequent repair or replacement) that Jürgens owes its own customer from case to case. The foregoing shall not limit Jürgens' right of choice under statutory law (section 439 para. (1) BGB).

7.2 Prior to accepting or satisfying a claim based on defect (including reimbursement of expenses, sections §§ 445a (1), 439 (2) and (3) BGB) that is raised by one of its customers, Jürgens shall notify the supplier briefly, describing the facts of the case, and shall request a written comment. If no substantiated comment follows within a reasonable period of time and if no amicable solution is found either, the claim based on defect actually granted by Jürgens shall be regarded as owed to the latter's customer. In such a case, the supplier shall bear the burden of proof to the contrary.

7.3 Jürgens' claims arising from recourse to supplier shall apply even if the defective goods are processed by Jürgens or by a third company, e.g. by installing it in another product.

8. Producer's liability

8.1 If the supplier is responsible for damage to a product it shall hold Jürgens free and harmless from and against any third party claims to the extent that the cause was set in supplier's sphere of control and organisation and the supplier has liability in the parties' external relations.

8.2 Within the scope of its obligation to hold free and harmless, supplier shall reimburse expenses within the meaning of sections 683, 670 BGB that result from or in connection with claims raised by third parties, including any recalls carried out by Jürgens. Jürgens shall notify the supplier – inasmuch as possible and reasonable – of the content and scope of any recalls and shall grant it opportunity to comment. Any other claims arising from statutory law shall not be affected.

8.3 The supplier shall take out and maintain product liability insurance with a blanket sum insured of at least EUR 5 million per personal injury/property damage.

9. Limitation period

9.1 The contracting parties' reciprocal claims shall expire in accordance with the provisions of statutory law unless laid down otherwise herein-below.

9.2 Contrary to section 438 para. (1), point (3) BGB, the general limitation period for claims based on defects shall be 3 years from the passing of risk. Where the parties have agreed that acceptance of possession shall be required, the limitation period shall commence on acceptance of possession. The 3-year limitation period shall apply also to claims based on defects in title, not including third party *in rem* surrender claims (section 438 para. (1), point (1) BGB); claims based on defects in title shall not become time-barred in any case for as long as the third party is able to assert the title against Jürgens – especially where it is not yet time-barred.

9.3 The limitation periods in sales law, including the above extensions, shall apply - within the scope provided for by statutory law – to all contractual claims based on defects. Insofar as Jürgens is entitled also to non-contractual claims for damages on the grounds of a defect, the regular limitation period (§§ 195, 199 BGB) of statutory law shall apply to such claims, unless the application of the limitation periods of sales law leads to a longer limitation period from case to case.

10. Industrial property rights

10.1 The supplier shall be responsible for ensuring that no third party rights, in particular copyrights, are infringed within the Federal Republic of Germany and Europe in connection with supplier's delivery and services. The supplier warrants that the works produced by supplier are free of third party rights and it shall hold free and harmless Jürgens from and against all and any third party claims. If any third party industrial property rights are infringed by the work and if on those grounds Jürgens is prohibited from fully or partly using the work, the supplier shall at its choice either procure for Jürgens the right to use and/or exploit the work or shall design the work in such a manner that it is free from industrial property rights. Any additional claims on the part of Jürgens shall not be affected.

10.2 If a third party raises claims against Jürgens for a violation of industrial property rights the supplier shall be obliged to hold Jürgens free and harmless from and against such claims at the latter's first written request. The supplier's obligation to hold free and harmless shall apply also to all and any expenses that Jürgens necessarily incurs through or in connection with the assertion of third party claims.

10.3 The above provisions of clauses 10.1 and 10.2 shall apply *mutatis mutandis* to service contracts.

11. Reservation of title / provision of goods / secrecy

11.1 Where Jürgens provides goods to the supplier, Jürgens reserves all title to them. Processing or transformation by the supplier shall always be regarded as carried out for Jürgens.

11.2 If the goods provided by Jürgens are inseparably commingled with other objects not owned by Jürgens, Jürgens shall have co-ownership of the new object in the same proportion as the value of the reserved goods to the other commingled objects at the time of commingling. Where commingling takes place in such a manner that the supplier's object must be regarded as the main object, it shall be deemed mutually agreed that the supplier shall transfer co-ownership to Jürgens on a pro rata basis; the supplier shall keep sole ownership or co-ownership safe for Jürgens.

11.3 Supplier shall notify Jürgens without undue delay of any damage to or incompleteness of goods provided. The supplier shall be liable to Jürgens for loss of material and/or damage in accordance with the provisions of statutory law.

11.4 The supplier is obliged to keep the Information it receives during order processing strictly secret within the meaning of clause 2.3 above. Such Information may only be disclosed to third parties after Jürgens' express written declaration of consent has been obtained. The obligation to maintain secrecy shall continue to apply after implementation of this contract has been completed; it shall expire no earlier than, and only to the extent that, the production/business knowledge contained in the Information provided has become generally known.

12. Place of jurisdiction / Place of performance

12.1 If the supplier is a merchant under commercial law ("Kaufmann"), legal person under public law, or a special fund under public law, Jürgens' place of business shall be the place of jurisdiction; Jürgens shall, however, also be entitled in all cases to bring an action at the place of performance of the delivery obligation, in accordance with the present Purchase Terms or an prevailing individual agreement, or at the general place of jurisdiction of the supplier. Prevailing provisions of statutory law, in particular regarding exclusive competences, shall not be affected.

12.2. Unless the order confirmation provides otherwise, Jürgens' place of business shall be the place of performance.

13. Choice of law

German law shall apply, including the UN Convention on Contracts for the International Sale of Goods. (CISG).

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