

Jürgens Maschinenbau GmbH & Co. KG - Standard Terms & Conditions of Delivery and Assembly

1. Application of the Standard Terms & Conditions

1.1 The present Standard Terms & Conditions shall apply to all business relations of the company Jürgens Maschinenbau GmbH & Co. KG, referred to hereinafter as "Jürgens".

1.2 The present Terms shall apply exclusively; Jürgens will not accept any conflicting or deviating terms of the customer, unless Jürgens expressly agrees to their application in writing. Jürgens' Terms shall apply even if Jürgens, despite having knowledge of conflicting or deviating customer's terms, performs delivery without reservation. On customer's taking delivery of the goods/performance the present Terms shall be deemed accepted, at the latest.

1.3 The present Terms shall apply solely to dealings with entrepreneurs, merchants, legal entities under public law, and special funds under public law.

1.4 Legally significant notices and communications of customer relating to the contract (e.g. setting of deadlines, notices of defects, cancellation of the contract, or reduction of the purchase price) must be sent in writing (letter, email, fax). Statutory formal requirements and other evidence, in particular in cases of doubt regarding the legal authority of the sender, shall not be affected.

2. Offer and conclusion of contract

2.1 If the order qualifies as an offer as defined under section 145 BGB (German code of civil law), Jürgens may accept it within 4 weeks. Jürgens' offers are non-binding and subject to change. A contract is concluded only when Jürgens confirms the order in writing or executes the order.

2.2 Jürgens reserves all copyright and title to all images, illustrations, drawings, calculations, quotes, estimates, data – even if stored electronically – and to all other documents; they may not be made accessible to any third party. The foregoing shall apply particularly to such information, written documents and stored data that is marked as confidential; prior to disclosure thereof to any third party, customer must obtain Jürgens' prior written approval.

2.3 Addenda, alterations, or side agreements shall only be valid if confirmed in writing by Jürgens. All and any agreements and arrangements made between Jürgens and customer for the purpose of contract implementation must be in writing.

2.4 Drawings, illustrations, measurements, weights, information in catalogues or brochures, and/or any other performance data, shall be binding only if expressly so agreed in writing. Such information shall not be deemed warranties of quality. The information shall only be binding if express reference is made to them in the order confirmation.

3. Delivery and performance period, delays

3.1 The commencement of the performance and delivery period stated by Jürgens is subject to the prior clarification of all technical and commercial questions, including e.g. receipt of all documents to be provided by customer, receipt of all and any official and/or non-official authorisation, approvals, observance of terms of payment, and, in particular, receipt of any agreed down payments, security deposits and/or letters of credit. If the foregoing requirements are not satisfied, the delivery periods shall be extended accordingly.

3.2.1 The dates and deadlines stated by Jürgens are non-binding, unless expressly agreed otherwise in writing. Jürgens generally accepts no risk of inability to procure goods/services.

3.2.2 The nature, volume and quality of delivery – and of assembly, where performed by the supplier – shall be determined solely by the specifications in the order confirmation.

3.2.3 The delivery period is complied with if, by its end, the delivery item has left Jürgens' plant or the customer has been informed that the delivery item is ready for shipment. The crucial date for compliance with the assembly deadline is the date of the notification that the goods are ready for acceptance, but at the latest the commissioning date.

3.3 If Jürgens is unable to meet delivery dates for reasons for which it is not responsible (non-availability of the goods/service), Jürgens will notify the customer without undue delay, at the same time stating the prospective new delivery date. If the goods/service are not available within the new delivery period either, Jürgens shall be entitled to withdraw from the contract in whole or in part, whereupon Jürgens shall refund any consideration already paid by the customer. Non-availability of goods/services particularly means for example the case that Jürgens receives a late delivery from its own supplier for a matching transaction that Jürgens concluded in order to meet its own supply obligation vis-à-vis the customer, that neither Jürgens nor its suppliers is/are at fault, or that Jürgens is not obliged in the individual case to procure the goods/services.

3.4 In the event Jürgens has failed to duly perform according to contract and the breach on Jürgens' part is insignificant, customer may neither withdraw from the contract nor demand damages in lieu of full performance nor reimbursement of futile expenses.

3.5 The conditions for the occurrence of default on delivery are defined by statutory law. In each and every case, however, a reminder letter by the customer is required. Reminder letters and deadlines shall only be valid if set in writing. In the event Jürgens defaults on delivery, customer may demand liquidated damages for the losses it suffers from such default. The amount of liquidated damages for each full calendar week of default shall be 0.5% of the net price (value of goods to be delivered), however not exceeding 5% of the value of the goods delivered late. Jürgens is entitled to prove that the customer suffered no loss or significantly fewer losses than the amount of liquidated damages set out herein-above.

3.6 Compliance with Jürgens' delivery obligations is subject to the prior punctual and proper performance of customers' obligations. The right to claim non-performance of contract is reserved. Jürgens shall be entitled at all times to perform deliveries and services in reasonable parts.

3.7 Customer's rights under clause 8 hereof and Jürgens' statutory rights, in particular in the case of an exemption from the obligation to perform (e.g. on the grounds of impossibility or unreasonableness of the service and/or subsequent performance/remedy), shall not be affected.

3.8 If the service has already been performed in part, customer may claim damages in lieu of performance in whole only if his/her interest in performance in whole so requires. In such a case, withdrawal from the contract as a whole shall be possible only if the customer demonstrably has no interest in performance in part.

3.9 In case of default on acceptance of delivery on the part of customer, or in case of a breach on customer's part of any other obligation to participate, Jürgens shall be entitled to assert the statutory claims to which it is entitled, including additional expenses (e.g. storage expenses). For this, Jürgens will charge liquidated damages in the amount of 0.5% per calendar week of the value of the goods to be delivered, however in total not exceeding 5% the value of the goods to be delivered, starting on the delivery date, i.e. – in the absence of a delivery date – on the date of the notification that the goods are ready to be dispatched. Jürgens' right to prove higher losses and its statutory claims (in particular reimbursement of additional expenses, reasonable compensation, termination) shall not be affected; however, the liquidated damages shall be deducted from any other monetary claims arising. Customer shall be permitted to prove that Jürgens suffered no loss or only significantly lower losses than the above amount of liquidated damages.

4. Passing of risk, packaging

4.1 Unless otherwise agreed, delivery shall be "ex works" Emsdetten (Incoterms 2010). At customer's request and expense, the goods will be delivered to a different destination (purchase contract involving carriage of goods; German: *Versendungskauf*). Unless otherwise agreed, Jürgens shall be entitled to determine the mode of shipment (in particular the haulier, route, packaging) itself.

4.2 The risk of accidental loss and accidental deterioration of the goods shall pass to customer on handover at the latest. In the case of a contract involving carriage of goods, however, the risk of accidental loss and accidental deterioration of the goods, and the risk of delay, shall already pass to customer upon delivery of the goods to the freight forwarder, the carrier or any other person or institution designated to carry out the shipment. Where the parties have agreed that acceptance of possession is required, the risk shall pass upon such acceptance of possession. In all other respects, the statutory laws governing contracts for works shall apply *mutatis mutandis* where the parties have agreed that acceptance of possession is required. Handover or acceptance of possession shall be deemed to have occurred if and when customer defaults on acceptance of delivery.

4.3 If customer so requests, Jürgens shall insure the delivery or its storage against breakage and damage through transport, fire, and water; the cost thereof shall be borne by customer.

4.4 Shipping and packing will be charged separately. Unless otherwise agreed, we shall be entitled to determine the mode of shipment (in particular haulier, route, packaging) ourselves.

5. Assembly

5.1 Where Jürgens owes assembly and the parties have agreed nothing to the contrary, following provisions shall apply in relation to assembly:

5.1.1 Customer shall ensure that Jürgens' staff find adequate board and lodging and medical care in the vicinity of the assembly site.

5.1.2 Customer shall ensure that equipment as well as utilities, such as water and energy, are available to Jürgens' staff in good time and free of charge to the extent necessary for carrying out assembly.

5.1.3 Customer shall provide seller with lockable or guarded rooms free of charge in the vicinity of the assembly site in which the delivery item and the equipment, tools and clothing of the assembly staff can be stored to protect it against theft and damage.

5.1.4 Customer must obtain in good time and prior to the start of assembly any permits that may be necessary to perform the assembly work and shall provide Jürgens with evidence of such permits upon request.

5.2 If one or more of the above conditions under clause 5 are not fulfilled and if as a result thereof Jürgens cannot reasonably be expected, or is unable, to carry out the assembly work it may refuse to perform such work without prejudice to Jürgens' other rights and claims.

6. Prices and payment

6.1 Unless agreed otherwise, Jürgens' prices shall apply "ex works", excluding packaging, freight, postage, insurance; such items will be invoiced separately. Additional deliveries and services will also be invoiced separately. The prices set out in the then valid assembly price list, as amended from time to time, shall apply for assembly.

6.2 Statutory value added tax is not included in the prices; it will be shown separately in the invoice in the statutory amount as on the invoicing date. Deduction of any discount must be specifically agreed in writing.

6.3 Jürgens reserves the right to reasonably change its prices in the event that, following the conclusion of contract, costs fall or rise, in particular as a result of collective agreements conclude, changes in the price of material, changes of freight costs, etc. Jürgens shall provide evidence thereof to customer on request.

6.4 In the absence of any special agreements, payment shall be made without any deduction to Jürgens' account, namely as follows:

- 1/3 as down payment on receipt of the order confirmation,
- 1/3 once the customer has been notified that the main parts are ready to be dispatched,
- the remaining amount within 30 days from the passing of the risk.

6.5 If, by the end of the above payment period, customer has failed to pay customer shall have defaulted on pay-

ment. The purchase price / remuneration shall be subject to interest at the applicable statutory default interest rate during the period of default. Jürgens reserves the right to claim additional damage based on default. Jürgens' claim to commercial interest from the due date (section 353 HGB (German commercial code)) from merchants shall not be affected.

6.6 Customer shall be entitled to setoff or retention rights only if and to the extent that customer's claim is *res judicata* or is undisputed. In case delivery is defective, customer's counter-claims, in particular those arising from the second sentence of clause 7.6 hereof, shall not be affected.

6.7 If Jürgens has knowledge of circumstances that give reason to question customer's creditworthiness Jürgens shall be entitled to demand advance payments or security without prejudice to other statutory claims, e.g. according to section 321 BGB.

7. Customer's claims based on defects

7.1 Customer's rights shall be governed by the provisions of statutory law in the event of defects in quality and/or defects of title, unless provided otherwise herein-below. The special provisions of statutory law shall generally not be affected in all cases of final delivery of goods to consumer (supplier recourse according to sections 478, 479 BGB).

7.2 In the case of purchase contracts, customer's claims for defects shall be subject to the prior condition that customer has duly fulfilled customer's obligations to inspect the goods and give notification of any defects (sections 377, 381 HGB). If a defect emerges on inspection or thereafter, it must be notified to Jürgens in writing without undue delay. Such notice shall be deemed to have been made without undue delay if it is made within two weeks, punctual sending of such notice sufficing for compliance with the time limit. Regardless of the obligation to inspect the goods and give written notice of any defects, customer shall give written notice of evident defects (including delivery of wrong item and delivery of insufficient quantities) within two weeks from delivery, punctual sending of such notice sufficing for compliance with the time limit. If customer fails to duly inspect the goods and/or give notification of a defect, Jürgens' liability shall be excluded for any defects not notified.

7.3 If the parties have expressly agreed that acceptance of possession and/or inspection of first sample is required, such acceptance and/or inspection shall be subject to the usual business and industry terms and conditions, unless agreed otherwise.

7.4 Customer shall be entitled to the regress claims provided for by statutory law against Jürgens only if and inasmuch as customer has not agreed with own customers on claims based on defects that exceed the defect claims provided for by statutory law.

7.4.3 If the parties have agreed that acceptance of possession and/or inspection of first samples is required, notification of defects that could thereby have been found is excluded.

7.5 Jürgens must be given opportunity to survey the defect notified to it. If and to the extent customer fails to duly fulfil the above obligation, customer shall have forfeited any rights based on defects in quality.

7.6 If the purchased item or the work produced is defective, Jürgens shall first be given opportunity to remedy the defect by subsequent performance within a reasonable period of time. Jürgens shall be entitled at its own choice to either repair it (repair) or – in the case of purchase contracts – to deliver a defect-free item (replacement) or – in the case of contracts for work to be produced – to produce a new work. Jürgens' right to refuse to carry out subsequent performance under the conditions of statutory law shall not be affected.

7.7 Jürgens shall be entitled to subject the subsequent performance it owes to the prior condition that customer pay the due purchase price / remuneration. Customer shall be entitled however to withhold a portion of the purchase price/remuneration that is in reasonable proportion to the

defect.

7.8 Jürgens will bear the expenses required for the purposes of testing, inspection and remedy, in particular the transport, travel, labour and material expenses (not: dismantling and installation costs), if an actual defect exists. If, however, a request of customer for defect rectification is found to be unjustified Jürgens may require the customer to compensate the costs thereby incurred.

7.9 In the event that subsequent performance fails or a reasonable grace period set by customer for subsequent performance has expired to no avail or can dispensed with under the provisions of statutory law, customer may withdraw from the contract or reduce the purchase price/remuneration. In the case of an insignificant defect, however, no right to withdrawal shall arise.

7.10 In case customer fails to comply with Jürgens' processing, assembly, or handling instructions or makes unauthorised changes to the product that do not conform to the original specifications, Jürgens will cease to be liable for defects in quality; something else shall apply only where a warranty case demonstrably is not due to one of the above exemptions.

7.11 Claims of the customer for damages or reimbursement of futile expenses shall arise only in accordance with clause 8 and are otherwise excluded.

7.12 Customer shall be responsible for ensuring that the goods delivered by Jürgens comply with the laws and rules in force in the country of destination, especially with regard to import, delivery, storage and use

8. Liability

8.1 Unless otherwise provided for in the present Terms, and in the following provisions, Jürgens' shall be liable for breaches of contractual and non-contractual obligations as provided by the relevant statutory laws.

8.2 Jürgens shall be liable to pay damages in cases of wilful intent and gross negligence – whatever the legal grounds. In cases of simple negligence, Jürgens shall be liable only

a) for losses arising from death, bodily harm or injuries to health,

b) for losses arising from breach of an essential contractual obligation (obligation that is sine qua non for the due and proper implementation of the contract and on the fulfilment of which the other contracting party regularly relies and may rely); in such cases, Jürgens liability is however limited to the foreseeable loss that typically occurs.

8.3 The limitations of liability arising from clause 8.2 shall not apply if and inasmuch as Jürgens maliciously fails to disclose a defect or guarantees the quality and/or properties of the goods. The same shall apply in the case of customer claims based on the German product liability act.

8.4 Customer may only withdraw from or terminate the contract on the grounds of a breach of an obligation that is not a defect if Jürgens is responsible for the breach. A free right to terminate on the part of customer (in particular under sections 651, 649 BGB) is hereby excluded. In all other regards, the conditions and legal consequences of statutory law shall apply.

8.5 Where Jürgens' liability is excluded or limited, this shall apply also to the personal liability of Jürgens' employees, staff, workers, representatives and agents.

9. Limitation period

9.1 The general limitation period for claims arising from defects in quality or defects in title is one year from delivery (purchase contracts) or from acceptance of possession (contracts for a work to be produced).

9.2 The above limitation periods shall not apply if the law prescribes longer periods in sections 438 (1) point (2) or 634 a (1) point (2) BGB. The special statutory provisions relating to third party in rem claims for restitution (section 438 (1) point (1) BGB), or malice of Jürgens / entrepreneur

(sections 438 (3), 634 a (3) BGB) and for claims based on recourse to supplier in cases of final delivery to a consumer (section 479 BGB) shall not be affected either.

9.3 The above periods of limitation shall apply also to contractual and non-contractual damages claims of customer that are based on a defect of the goods / the works, unless the application of the regular statutory limitation period (section 195, 199 BGB) resulted in a shorter limitation period in the individual case. In no case shall the limitation periods of the German product liability act be affected. In all other regards, customer's damages claims according to clause 9 shall be subject exclusively to the statutory limitation periods.

10. Reservation of title

10.1 Ownership of the delivered goods shall remain with Jürgens until full payment of the corresponding receivables has been effected. Payment shall not be deemed effected until Jürgens has received the corresponding amount.

10.2 In the event that customer breaches the contract, in particular in case of default on payment, Jürgens shall be entitled to repossess the purchased item. Jürgens' repossessing the purchased item shall not be construed to be a withdrawal from the contract, unless Jürgens expressly declared so in writing.

10.3 Distraint on the purchased item by Jürgens shall always qualify as withdrawal from the contract. On having repossessed the purchased item, Jürgens shall be entitled to exploit it. The proceeds from exploitation shall be credited against customer's liabilities, less reasonable exploitation costs.

10.4 Customer shall treat the purchased item with the due care; in particular, customer must adequately insure it at reinstatement value at customer's own expense against damage or loss through fire, water and theft. Where maintenance or inspection work is required, customer must carry it out at customer's own expense.

10.5 In the event of distraint, seizure or other third party intervention, Jürgens must be notified without undue delay in writing.

10.6 If the reservation of title is not effective under the laws of the country in which the purchased item is located, customer shall provide security of equal value at Jürgens' request. If customer fails to comply with such request, Jürgens may require immediate payment of all and any outstanding invoices regardless of the agreed payment terms.

11. Governing law, place of performance, place of jurisdiction, severability clause

11.1 For all present and future claims arising from business relationships with merchants, legal entities under public law, and special funds under public law, including bills of exchange and cheques, the exclusive place of jurisdiction shall be the registered office of Jürgens "Emsdetten". However, Jürgens shall also be entitled to bring court action against customer before the court of customer's domicile.

11.2 Unless otherwise provided for in the order confirmation, the registered office of Jürgens "Emsdetten" shall be the place of performance for all obligations arising from the contractual relationship.

11.3 The present Terms and all legal relations between Jürgens and customer shall be governed by the laws of the Federal Republic of Germany. The application of the UN Sales Convention (United Nations Convention of 11 April 1980 on Contracts for the International Sale of Goods, BGBL 1989 II p. 588, b.e.r. 1990 II,1699) is hereby excluded.

11.4 In case one or more than one provision of the present Terms is or becomes invalid, the contracting parties shall agree on a legally valid substitute provision that comes as close as possible to the invalid provision in economic terms.

As of: August 2019