

# General Terms and Conditions

Your contract and contact person is

CMC Maschinenbau GmbH

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## ***1. Applicability of the terms and conditions***

### **1.1**

Sales, deliveries and services of CMC Maschinenbau GmbH to the customer are carried out exclusively in accordance with these General Terms and Conditions (hereinafter GTC). At the latest with receipt of the goods/services, the customer agrees to these general terms and conditions.

### **1.2**

The object of these General Terms and Conditions is the sale (including installment sale) of all goods distributed by CMC Maschinenbau GmbH, in particular hardware and all accessories as well as all standard software including operating systems.

## ***2. Offer and conclusion of contract***

### **2.1**

Offers from CMC Maschinenbau GmbH are always subject to change and are non-binding.

**2.2**

The customer's order constitutes a non-binding contract offer to which the customer is bound for a period of 14 days from receipt of the order from CMC Maschinenbau GmbH.

**2.3**

The contract is only concluded by written/telewritten order confirmation by CMC Maschinenbau GmbH, e.g. by e-mail, fax.

**3. Subject matter of the contract****3.1**

The content and scope of the service owed by CMC Maschinenbau GmbH results exclusively from the written/telex order confirmation. In particular, illustrations, descriptions or advertising statements such as quality, performance and quality information on the website are only to be regarded as approximate. In no case do such illustrations, information and advertising statements constitute property assurances, unless they are expressly stated in writing by CMC Maschinenbau GmbH as such in the order confirmation.

**3.2**

CMC Maschinenbau GmbH reserves the right to make minor deviations from product information as well as improvements and extensions, insofar as they are not unreasonable for the customer.

**4. Prices****4.1**

Product price information is exclusive of VAT ex Frankenthal. The price does not include costs of packaging and shipping, in particular postage, freight and delivery fees or other ancillary services such as training, installation or maintenance. Packaging and shipping prices are taken from the customer's separate packaging and shipping price list.

CMC Maschinenbau GmbH is entitled but not obligated to take out transport insurance at the customer's expense.

**5. Payment arrangements****5.1**

Payments are due for payment no later than 14 days from the invoice date without deduction. Payments to CMC Maschinenbau GmbH are deemed to have been made only when CMC Maschinenbau GmbH can dispose of the amount.

**5.2**

If the customer is in default of payment, CMC Maschinenbau GmbH is entitled to demand interest of 4.5% p.a. above the respective base interest rate in accordance with the Discount Rate Reconciliation Act from the occurrence of the delay. CMC Maschinenbau GmbH reserves the right to prove a higher damage caused by delay. The customer is entitled to prove to CMC Maschinenbau GmbH a lower damage caused by delay.

**5.3**

Bills of exchange and cheques are only collected for performance and for CMC Maschinenbau GmbH free of costs and expenses.

**5.4**

The buyer is only able to offset against purchase price claims with counterclaims recognised or legally binding by CMC Maschinenbau GmbH. A right of retention can only be asserted by the customer if his counterclaim is based on the same contract and is undisputed and legally established. In the case of ongoing business relations, each order shall be deemed to be a separate contractual relationship.

**5.5**

All claims of CMC Maschinenbau GmbH, including those for which bills of exchange and cheques have been accepted or instalment payments have been agreed, become fully due immediately if the customer is in default with a payment due or if CMC Maschinenbau GmbH becomes aware of significant deterioration of the customer's financial situation after conclusion of the contract. CMC Maschinenbau GmbH is then entitled to make outstanding deliveries or services exclusively against advance payment or against security. If the advance payments or security payments have not been made even after a set, reasonable grace period has elapsed, CMC Maschinenbau GmbH may withdraw from individual or all affected contracts in whole or in part.

CMC Maschinenbau GmbH remains free to assert further claims.

**6. Delivery/performance time, partial delivery****6.1**

Delivery dates or deadlines, which can be agreed upon in a binding or non-binding manner, must be in writing and are included in the order confirmation. Binding deadlines are also to be understood by the customer as approx. times, unless otherwise agreed, and begin from the date of the order confirmation.

**6.2**

After the binding delivery or performance deadlines/dates have expired, the customer must set CMC Maschinenbau GmbH in writing/by telex a reasonable grace period with the declaration that he will refuse acceptance of performance after this period has elapsed. Claims for damages are

excluded unless otherwise stated in clause 12.

### **6.3**

Binding delivery/performance periods and dates shall be extended for CMC Maschinenbau GmbH appropriately in the event of force majeure (e.g. natural disasters, illnesses) and other obstacles for which CMC Maschinenbau GmbH is not responsible, such as lockouts, strikes or operational disruptions, both in-house and in supplier or manufacturer's companies. This also applies if such obstacles do not arise until CMC Maschinenbau GmbH is already in arrears.

### **6.4**

CMC Maschinenbau GmbH shall not be responsible to the customer for delaying or not being supplied to CMC Maschinenbau GmbH if a supplier or manufacturer carefully selected by CMC Maschinenbau GmbH is responsible for this circumstance.

### **6.5**

CMC Maschinenbau GmbH is entitled to make partial deliveries at any time, unless the partial delivery is not meaningfully commercially usable for the buyer or is unreasonable.

Permissible partial deliveries are considered as independent services in particular for payment/guarantee obligations and the transfer of risk.

## **7. Transfer of risk**

### **7.1**

The risk shall pass to the buyer as soon as the shipment has been handed over to the person carrying out the transport or **has left the Frankenthal warehouse or a representative of CMC Maschinenbau GmbH for dispatch.**

### **7.2**

If the shipment is delayed at the request of the customer, the risk passes to the customer with the notification of readiness for dispatch by CMC Maschinenbau GmbH.

## **8. Retention of title, processing, mixing**

### **8.1**

Until full payment of the ordered delivery, CMC Maschinenbau GmbH reserves the title to all objects delivered within the scope of this contract (reserved goods). Before the transfer of ownership, the buyer undertakes to dispose of the reserved goods only with the prior consent of CMC Maschinenbau GmbH.

### **8.2**

In the event of attachments or other interventions by third parties, the customer must inform the third party of the ownership relationships and notify CMC Maschinenbau GmbH immediately in writing. The customer shall bear the costs of defensive measures that arise in connection with such access by CMC Maschinenbau GmbH or otherwise.

### **8.3**

The assertion of the retention of title as well as the attachment of the goods by CMC Maschinenbau GmbH shall not be deemed to be a withdrawal from the contract.

### **8.4**

A processing or conversion of the reserved goods by the customer is always carried out for CMC Maschinenbau GmbH. If the purchased item is processed with other items not owned by CMC Maschinenbau GmbH, CMC Maschinenbau GmbH acquires co-ownership of the new item in proportion to the value of the purchased item to the other processed goods at the time of processing.

### **8.5**

If the goods subject to retention of title are mixed with other items not owned by CMC Maschinenbau GmbH, CMC Maschinenbau GmbH acquires co-ownership of the new item in proportion to the value of the purchased item to the other mixed item at the time of mixing. If the buyer's item, which was not initially owned by CMC Maschinenbau GmbH, is to be regarded as the main item, the customer shall transfer co-ownership to CMC Maschinenbau GmbH on a pro rata basis.

### **8.6**

CMC Maschinenbau GmbH undertakes to release the securities to which it is entitled at the request of the customer to the extent that the value of the securities exceeds the claims to be secured by more than 15%.

## **9. Warranty / Acceptance**

### **9.1**

The customer inspects the delivered goods immediately after receipt for transport damage or quantity differences. Obvious defects must be reported to CMC Maschinenbau GmbH in writing/by telex without delay, but at the latest within 14 days after delivery.

### **9.2**

The warranty period for non-obvious defects is 12 months after Section 438 of the German Civil Code (BGB) from delivery of the goods.

### **9.3**

The warranty claims of the customer - even in the absence of a guaranteed property - are initially limited to rectification or replacement delivery at the expense and at the discretion of CMC Maschinenbau GmbH.

### **9.4**

In the event of a notification of defects, CMC Maschinenbau GmbH demands at its own expense and at its option that

a) the customer keeps the defective product or delivery, for which CMC Maschinenbau GmbH is free of charge, and enables CMC Maschinenbau GmbH to carry out an examination of the goods and repair or replacement delivery during normal business hours.

b) the defective product is delivered to CMC Maschinenbau GmbH for investigation and rectification of defects; In this case, the customer is obliged to send or deliver the defective goods together with a precise description of the defect, specifying the articles, model, serial number and a copy of the delivery note to the above-mentioned business address of CMC Maschinenbau GmbH.

#### **9.5**

In the case of clause 9.4. b), the customer is obliged, at the request of CMC Maschinenbau GmbH, to insure the defective goods for transport at their expense.

#### **9.6**

If a repair or replacement delivery fails definitively within a reasonable time frame for the customer, the customer has the right to demand either a reduction of the purchase price (reduction) or cancellation of the contract (change).

### **9.7 The warranty right shall be waived if**

a) original technical identifiers are changed or removed

b) contract goods are improperly stored, installed or used by the customer or by third parties,

c) repairs or product modifications are carried out independently by the customer or third parties, in particular equipment is opened, parts are replaced or consumables are used that do not comply with the original specification.

Das Gewährleistungsrecht entfällt, wenn

If the customer proves in the cases referred to in (b) and (c) that the circumstances mentioned there were not the cause of the defect, the warranty claim remains.

#### **9.8**

Insignificant deviations in colour, dimensions and/or other quality or performance characteristics, as well as normal wear and tear of the goods do not trigger warranty rights.

#### **9.9**

If a check of the defect notification reveals that there is no warranty claim, **the customer will be charged the costs for inspection and repair services as well as any travel costs incurred at the applicable** valid set-off rate for individual orders of CMC Maschinenbau GmbH.

#### **9.10**

Acceptance at our plant in Frankenthal is deemed to have been agreed in any case and is made against calculation..

An acceptance date is set together with the customer.

If the goods are delivered without acceptance at the customer's special request, the goods shall be deemed to have been accepted.

Acceptance in the customer's house is made against calculation and must be agreed separately at the time of conclusion of the contract.

### **10. Spare parts, repairs**

Replaced parts/products are again the property of CMC Maschinenbau GmbH.

### **11. Third-party software**

For third-party software supplied by CMC Maschinenbau GmbH but not produced, the license terms and guarantees attached to this third-party software and guarantees of the respective software manufacturer apply, which the customer accepts with the use of the software.

### **12. Liability**

#### **12.1**

Insofar as nothing else is apparent from the following paragraphs, CMC Maschinenbau GmbH shall only be liable for damages of the customer, but always insofar as these have been caused by CMC Maschinenbau GmbH or its vicarious agents in an intentional or grossly negligent manner. This limitation of liability applies to all claims for damages, regardless of the legal reason, in particular also for liability arising from the contract, due to tort, positive breach of contract and fault in contract negotiations.

#### **12.2**

CMC Maschinenbau GmbH is fully liable for personal injury and liability in accordance with product liability. Furthermore, the limitation of liability pursuant to Section 12.1 does not apply to damages that arise due to the absence of expressly guaranteed properties, provided that the assurance is precisely intended to protect the customer against the damage that has occurred.

#### **12.3**

CMC Maschinenbau GmbH is also liable for slight negligence for the breach of essential contractual obligations (cardinal obligations), but only in the amount of the damage typical of the contract, reasonably foreseeable.

**12.4**

In the event of data or loss of the program, CMC Maschinenbau GmbH shall only be liable to the extent of the damage, which would not have been avoided by appropriate precautionary measures taken by the buyer, in particular by making backup copies of all data and programs on a daily basis.

**13. *Obligation to provide data protection***

The customer undertakes to back up data and programs at regular intervals, but at least once a day, so that they can be restored in the event of a loss with reasonable effort.

**14. *Confidentiality, Data Protection***

**14.1 The customer undertakes to keep**

secret for an unlimited period of time all information that has become known to him in the course of the business relationship, which is described as confidential or which is recognizable as business or trade secrets of CMC Maschinenbau GmbH due to other circumstances, and – unless this is necessary for the fulfilment of the purpose of the contract – neither to record nor to pass on to third parties or to exploit them in any way.

**14.2**

CMC Maschinenbau GmbH reserves the right to use data purchased by the customer for internal marketing purposes, with the withholding of the provisions of the Federal Data Protection Act. With the consent of the customer, the data can also be used in particular for sending advertising by e-mail, fax or by postal means to the customer. even after consent, the customer is entitled at any time to object to such use by written/telex notification to CMC Maschinenbau GmbH.

**15. *Final provisions***

**15.1**

Deviations, amendments and additions to the contract and the GTC must always be in writing. This also applies to this written form requirement.

**15.2**

The assignment of all claims arising from the contractual relationship by the customer, in particular warranty and warranty claims, requires the prior written approval of CMC Maschinenbau GmbH.

**15.3**

This Agreement is governed exclusively by German law.

**15.4**

In the event of the ineffectiveness of one or more provisions of this contract, the validity of all other provisions shall remain unaffected.

Frankenthal/Pfalz, August 2016

Ulrich Schöwerling  
(Managing Director)