

## **General Terms and Conditions of Sale and Delivery of Holmer Maschinenbau GmbH**

### **§ 1 Scope of Application**

(1) These General Terms and Conditions of Sale and Delivery (hereinafter referred to as GTC) apply to all business GmbH – hereinafter referred to as Holmer or we/us – with contracting parties regarding all deliveries and other (service) performances. The GTC apply to entrepreneurs (§ 14 of the German Civil Code [Bürgerliches Gesetzbuch, BGB]), legal entities under public law or special funds under public law. These GTC shall also apply to the extent then applicable if contract negotiations do not lead to the conclusion of a contract or if the parties erroneously assume that a contract has not in fact been concluded.

(2) Unless otherwise agreed, the terms and conditions in effect at the time of the buyer's order or, in any case, the most recent version communicated to them in text form shall apply as a framework agreement to similar future contracts without the need for us to reference them in each individual case.

(3) Our Terms and Conditions apply exclusively. Deviating, conflicting or supplementary terms and conditions of the contracting party shall only become part of the contract if and insofar as we have expressly agreed to their validity. This requirement of consent shall apply in any case, for example even if we carry out the delivery to the buyer without reservation in full knowledge of the buyer's general terms and conditions.

(4) Individual agreements made with the buyer in individual cases (including collateral agreements, supplements and amendments) shall in any case take precedence over these Terms and Conditions. Subject to proof to the contrary, a written contract or our written confirmation shall be decisive for the content of such agreements.

(5) Legally binding declarations and notifications by the buyer in relation to the

contract (e.g. setting of deadlines, notification of defects, withdrawal or reduction) must be made in writing, i.e. in written or text form (e.g. letter, email, fax). Statutory provisions and further evidence, in particular in the event of doubts about the legitimacy of the declarant, remain unaffected.

(6) References to the applicability of statutory provisions are for clarification purposes only. Even without such equalization, the statutory provisions shall therefore apply unless they are directly amended or expressly excluded in these Terms and Conditions.

### **§ 2 Offer and Conclusion of Contract**

(1) Holmer's offers are subject to change and non-binding. This also applies if Holmer has provided the contracting party with documents. We also reserve the right to make changes to the design and form of the contractual items subject to the offer, provided that the usage characteristics of the contractual item are not fundamentally changed.

(2) The order of the goods by the contracting party shall be deemed a binding contractual offer. Unless otherwise stated in the order, the contracting party shall be bound by their offer for four weeks from receipt by Holmer. Holmer is entitled to accept the offer within this period.

(3) Acceptance of the offer can be declared in writing or in text form (for example by order confirmation) or by delivery of the goods to the buyer.

(4) If Holmer has transmitted and/or handed over documents to a (potential) contracting party during contract negotiations or otherwise, these documents must be returned or destroyed immediately by the contracting party at Holmer's discretion and upon first request if a contract is not concluded or the

contractual relationship is terminated by withdrawal or otherwise.

### **§ 3 Documents, Data Carriers**

(1) All documents handed over by Holmer to a (potential) contracting party and otherwise made accessible shall always remain the property of Holmer, unless otherwise agreed or regulated.

(2) Documents within the meaning of these GTC are all catalogs, technical documentation, drawings, plans, calculations, operating manuals, product descriptions or other carriers of information created or published by Holmer, irrespective of whether they are embodied or electronically stored and whether they are directly or only perceptible by (technical) means.

(3) The copyright and other intellectual property rights to documents shall always remain with Holmer, irrespective of whether embodied documents or data carriers on which documents are stored have become the property of the (potential) contracting party.

(4) § 7 shall apply mutatis mutandis to embodied documents or data carriers on which documents are stored.

(5) Computer data carriers handed over to contracting parties by Holmer for the provision and performance of service/maintenance work on Holmer machines shall always remain the property of Holmer.

(6) All documents and information provided or otherwise made available to contracting parties by Holmer may only be made accessible to third parties with the prior consent of Holmer in specific individual cases.

### **§ 4 Prices and Terms of Payment, Non-performance**

(1) Unless otherwise agreed in individual cases, our current prices at the time of conclusion of the contract shall apply ex

warehouse plus statutory VAT.

(2) The prices ex warehouse do not include costs for packaging, loading and transportation, nor other transport-related costs (such as insurance). The contracting party shall bear the additional costs incurred in this regard, plus statutory value-added tax.

(3) Any customs duties, fees, taxes and other public charges shall be borne by the contracting party.

(4) In the absence of a separate written agreement, the purchase price shall be due and payable within ten days of invoicing and delivery or collection or default of acceptance.

(5) Holmer is entitled at any time, even in the context of ongoing business relationships, to make a delivery in whole or in part only against advance payment.

(6) Unless otherwise agreed, advance payments are due and payable within ten days of invoicing.

(7) The contracting party shall be in default upon expiry of a payment deadline. During the period of default, the purchase price shall bear interest at 9 percentage points above the respective base interest rate; § 353 of the German Commercial Code (Handelsgesetzbuch, HGB) remains unaffected. We reserve the right to assert further claims for damages caused by delay.

(8) The contracting party shall only be entitled to a right of set-off or retention insofar as a claim has been legally established or is undisputed. In the event of defects in a delivery, the relevant counter-rights of the contracting party shall remain unaffected, in particular in accordance with § 8(6) sentence 2 of these GTC.

(9) If circumstances relating to the contracting party become apparent after conclusion of the contract which significantly reduce the

contracting party's creditworthiness compared to the time of conclusion of the contract or which cast doubt on the contracting party's ability and/or willingness to perform, and/or if the contracting party culpably defaults on payments within agreed payment terms, Holmer shall be entitled, irrespective of the originally agreed payment terms, to demand immediate payment of the amount still payable by the contracting party and/or to demand securities or advance payments.

(10) In the cases set forth in paragraph 9, Holmer is also entitled to refuse performance in accordance with the statutory provisions and – if necessary after setting a deadline – to withdraw from the contract (§ 321 BGB). In the case of contracts for the manufacture of non-fungible goods (individual production), Holmer may declare its withdrawal immediately; the statutory regulations on the dispensability of setting a deadline remain unaffected.

(11) If Holmer withdraws from the contract for reasons for which the contracting party is responsible (e.g. default in payment or acceptance), Holmer is entitled to demand compensation from the contracting party for non-performance in the amount of 15% of the net remuneration. The contracting party is entitled to prove that Holmer has suffered less damage or no damage at all. Holmer reserves the right to assert claims for damages in excess of the aforementioned lump sum as well as other claims for compensation.

### **§ 5 Delivery Times, Delays in Delivery, Incoterms**

(1) The delivery period shall be agreed individually or specified by Holmer upon acceptance of the order. The delivery period shall only be binding if it has been expressly confirmed or stated by Holmer as binding in writing or in text form.

(2) If the contracting party has to cooperate in the execution of the order by Holmer, the

delivery period shall only commence upon fulfillment of the corresponding action or upon receipt of all necessary information by Holmer.

(3) The occurrence of our delay in delivery shall be determined in accordance with the statutory provisions. In any case, however, a reminder from the contracting party is required. If Holmer is in default of delivery, the contracting party may demand lump-sum compensation for damages caused by default. The lump-sum compensation shall amount to 0.5% of the net price (delivery value) for each completed calendar week of delay, up to a maximum of 5% of the delivery value of the goods delivered late. Holmer reserves the right to prove that the contracting party has suffered no damage at all or only significantly less damage than the above lump sum.

(4) The rights of the contracting party pursuant to § 8 of these GTC and statutory rights of Holmer, in particular in the event of an exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of performance and/or subsequent performance), shall remain unaffected.

(5) Insofar as reference is made to Incoterms without a specific version for the further agreement of delivery terms, the most current version applicable at the time of conclusion of the contract shall be deemed to have been agreed.

### **§ 6 Delivery and Transfer of Risk**

(1) Delivery shall be ex warehouse, which is also the place of performance for the delivery and any subsequent performance. At the request and expense of the buyer, the goods will be shipped to another destination (sale to destination). Unless otherwise agreed, Holmer is entitled to determine the type of shipment (in particular transport company, shipping route, packaging) itself.

(2) The risk of accidental loss and accidental deterioration of the goods shall pass to the

buyer at the latest upon handover. In the case of sale by dispatch, however, the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay shall already pass upon handover of the goods to the forwarding agent, the carrier or the person or institution otherwise designated to carry out the shipment.

(3) Insofar as an acceptance of the production has to take place for individual and/or special productions, this shall be decisive for the transfer of risk. The statutory provisions of the law on contracts for work and services shall also apply accordingly to an agreed acceptance. If the buyer is in default of acceptance, this shall be deemed equivalent to handover or acceptance.

(4) If the contracting party fails to cooperate despite the agreed deadline for this action, if they do not fulfill their obligation to collect or accept the goods contrary to the agreed deadline or offer (§§ 294 f. BGB) or reminder, or if the delivery is delayed due to other circumstances for which they are responsible, the contracting party shall be in default (contracting party default).

(5) Holmer is entitled to demand compensation for damages resulting from the contracting party's delay, including additional expenses (e.g. storage costs). The lump-sum compensation shall amount to 0.5% of the net price (delivery value) for each completed calendar week of delay on the part of the contracting party, up to a maximum of 5% of the delivery value of the goods not accepted. Holmer reserves the right to prove and assert higher damages and to assert statutory claims (in particular reimbursement of additional expenses, reasonable compensation, termination); the lump sum shall be offset against further monetary claims. The contracting party shall be entitled to prove that Holmer has incurred no damage at all or only significantly less damage than the above lump sum.

## **§ 7 Retention of Title, Trade-in**

(1) Holmer retains title to the goods sold until full payment of all current and future claims of Holmer arising from the purchase contract and the ongoing business relationship (secured claims).

(2) The goods subject to retention of title may not be pledged to third parties or assigned as security before full payment of the secured claim.

(3) If the contracting party acts in breach of contract, in particular in the event of non-payment of the purchase price due, Holmer shall be entitled to withdraw from the contract in accordance with the statutory provisions and/or to demand the return of the goods and/or any existing claims for the return of the goods based on the retention of title. The demand for return does not immediately include a declaration of withdrawal; Holmer is rather entitled to merely demand the return of the goods and to reserve the right to withdraw from the contract. If the contracting party does not pay the purchase price due, Holmer may only assert these rights if the contracting party has previously been unsuccessfully set a reasonable deadline for payment or if such a deadline is dispensable according to the statutory provisions.

(4) With the handover of machines by the contracting party to Holmer within the framework of trade-in agreements, the contracting party declares to the best of their knowledge and belief that there are no third-party rights to the items handed over to Holmer for trade-in and that the contracting party is entitled to trade-in and transfer ownership to Holmer.

## **§ 8 Warranty and Liability**

(1) The statutory provisions shall apply to the rights of the contracting party in the event of material defects and defects of title (including incorrect and short deliveries as well as

improper assembly or defective assembly instructions), unless otherwise specified below. Claims arising from supplier recourse are excluded if the defective goods have been further processed by the contracting party or another entrepreneur, for example by installation in another product.

(2) The basis of Holmer's liability for defects is above all the agreement reached on the quality of the goods. All product descriptions that are the subject of the individual contract or have been made public by Holmer (in particular in catalogs or on our Internet homepage) shall be deemed to be an agreement on the quality of the goods.

(3) Insofar as the quality has not been changed, it is to be assessed in accordance with the statutory regulation whether a defect exists or not (§ 434(1) sentences 2 and 3 BGB). However, Holmer accepts no liability for public statements made by the manufacturer or other third parties (e.g. advertising statements). Liability shall also be excluded if and to the extent that the contracting party does not comply with and/or exceeds the usage and load limits set out in the operating manuals provided by Holmer.

(4) The contracting party's claims for defects are subject to the condition that they have fulfilled their statutory duties of inspection and notification of defects (§§ 377, 381 HGB). If a defect is discovered during delivery, inspection or at any later time, we must be notified of this in writing without delay. In any case, obvious defects must be reported in writing within two weeks of delivery and defects not recognizable during the inspection within the same period from discovery. If the contracting party fails to properly inspect the goods and/or report defects, our liability for the defect not reported or not reported on time or not reported properly shall be excluded in accordance with the statutory provisions.

(5) If the delivered item is defective, Holmer may initially choose whether we provide

subsequent performance by remedying the defect (rectification) or by delivering a defect-free item (replacement delivery). Holmer's right to refuse subsequent performance under the statutory conditions remains unaffected.

(6) Holmer is entitled to make the subsequent performance owed dependent on the contracting party paying the purchase price due. However, the buyer is entitled to retain a reasonable part of the purchase price in proportion to the defect.

(7) The contracting party must give Holmer the time and opportunity required for the subsequent performance owed, in particular to hand over the rejected goods for inspection purposes. In the event of a replacement delivery, the contracting party must return the defective item to Holmer in accordance with the statutory provisions. Subsequent performance does not include the removal of the defective item, nor the reinstallation if Holmer was not originally obliged to install it.

(8) Holmer shall bear or reimburse the expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labor and material costs and, if applicable, removal and installation costs, in accordance with the statutory provisions, if a defect actually exists. Otherwise, Holmer may demand compensation from the contracting party for the costs incurred as a result of the unjustified request to remedy the defect (in particular inspection and transport costs), unless the lack of defectiveness was not recognizable to the contracting party.

(9) In urgent cases, for example if operational safety is at risk or to prevent disproportionate damage, the contracting party has the right to rectify the defect itself and to demand compensation from Holmer for the expenses objectively necessary for this. Holmer must be informed immediately, if possible in advance, of any such self-remedy. The right of self-remedy does not exist if Holmer would be entitled to refuse a corresponding subsequent

performance in accordance with the statutory provisions.

(10) If the supplementary performance has failed or a reasonable deadline to be set by the contracting party for the supplementary performance has expired unsuccessfully or is dispensable according to the statutory provisions, the contracting party may withdraw from the purchase contract or reduce the purchase price. However, there is no right of withdrawal in the event of an insignificant defect.

(11) Claims of the contracting party for damages or reimbursement of futile expenses shall only exist in accordance with § 10, even in the case of defects, and are otherwise excluded.

### **§ 9 Confirmation of Receipt**

The contracting party undertakes to issue the confirmation of receipt required by VAT law in the proper form and to hand it over to Holmer within seven days of delivery of the goods at the latest. If the contracting party does not hand over the confirmation of receipt to Holmer within the aforementioned period, Holmer is entitled to demand the amount of VAT due on the taxable treatment of the order as security from the contracting party; the contracting party is obliged to pay at Holmer's first request. If, in the opinion of the tax office, Holmer owes VAT for the underlying order in the absence of a confirmation of receipt, the contracting party is obliged to pay Holmer the corresponding VAT amount at Holmer's first request. If the contracting party has provided security to Holmer, this shall be offset against the compensation up to the amount of the respective VAT. The right to assert further damages (e.g. interest on arrears) due to non-receipt of confirmation of receipt from the contracting party is reserved in all cases.

### **§ 10 Other Liability**

(1) Unless otherwise stated in these GTC, including the following provisions, Holmer shall be liable in the event of a breach of contractual and non-contractual obligations in accordance with the statutory provisions.

(2) Holmer shall be liable for damages – irrespective of the legal grounds – within the scope of fault-based liability in cases of intent and gross negligence. In the event of simple negligence, Holmer shall be liable, subject to a milder standard of liability in accordance with statutory provisions (e.g. for care in its own affairs), only

a. for damages resulting from injury to life, limb or health,

b. for damages arising from the not insignificant breach of a material contractual obligation (an obligation whose fulfillment is essential for the proper execution of the contract and on whose compliance the contracting party regularly relies and may rely); in this case, however, Holmer's liability is limited to compensation for foreseeable, typically occurring damages.

(3) The limitations of liability resulting from paragraph 2 shall also apply to breaches of duty by or in favor of persons for whose fault Holmer is responsible according to statutory provisions. They do not apply if Holmer has fraudulently concealed a defect or has assumed a guarantee for the quality of the goods and for claims of the contracting party under the Product Liability Act (Produkthaftungsgesetz).

(4) The contracting party may only withdraw from or terminate the contract due to a breach of duty that does not consist of a defect if Holmer is responsible for the breach of duty. A free right of termination of the contracting party (in particular according to §§ 651, 649 BGB) is excluded. In all other respects, the statutory requirements and legal consequences apply.

## **§ 11 Limitation Period**

(1) Notwithstanding § 438(1) no. 3 BGB, the general limitation period for claims arising from material defects and defects of title is one year from delivery. If acceptance has been agreed, the limitation period shall commence upon acceptance.

(2) Special statutory provisions on the statute of limitations remain unaffected (in particular, § 438(1), § 438(3), §§ 444, 445b BGB).

(3) The above limitation periods of the sales law shall also apply to contractual and non-contractual claims for damages of the buyer based on a defect of the goods, unless the application of the regular statutory limitation period (§§ 195, 199 BGB) would lead to a shorter limitation period in individual cases. However, the buyer's claims for damages pursuant to § 11(2) sentences 1 and 2(a) as well as in accordance with the Product Liability Act shall lapse exclusively in accordance with the statutory limitation periods.

## **§ 12 Data Protection**

(1) The nature and scope of data collection relevant to data protection by Holmer, as well as the specific provisions on data protection, are set forth in the privacy policy. The current version of the privacy policy is available on Holmer's website at <https://www.holmermaschinenbau.com/quicklinks/datenschutz.html>.

(2) Machine and usage data that Holmer records or collects electronically or otherwise is used primarily for the purposes of diagnosis, maintenance, planning and execution of customer services and repairs as well as for the further development of the products and other services offered by Holmer. However, we reserve the right to use the collected usage and machine data for other purposes.

(3) Holmer is at liberty to collect, record and store usage and machine data (telemetry

data) itself or through third parties that meet the highest security standards.

(4) The contracting party agrees to the current and, in the course of further technical development of products and product parts as well as services of Holmer, possibly accompanying automated recording and unaltered storage of usage and machine data; the contractual partner acknowledges and accepts these data as binding.

## **§ 13 Machine Data and Services**

(1) Holmer collects and stores machine data depending on the technical status and machine version, among other things for the provision of services. For details, please refer to the relevant section in Holmer's privacy policy <https://www.holmermaschinenbau.com/quicklinks/datenschutz.html>.

(2) Insofar as the reason for and scope of services provided by Holmer are not set out in a separate agreement, the contracting party shall have no claim to such services. The provision of service benefits, whether for an unlimited or limited period and free of charge, shall not establish any entitlement to future service benefits from Holmer. Unless otherwise agreed separately, liability shall be governed accordingly by § 10.

## **§ 14 Applicable Law, Place of Jurisdiction**

(1) These Terms and Conditions and the contractual relationship between Holmer and the buyer shall be governed by the law of the Federal Republic of Germany to the exclusion of international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods.

(2) If these Terms and Conditions are translated into a language other than German, the German version of the relevant provision shall be authoritative and binding in cases of doubt with regard to content and

interpretation.

(3) If the contracting party is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive – also international – place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be Holmer's registered office in Schierling/Eggmühl. The same applies if the contracting party is an entrepreneur within the meaning of § 14 BGB. In all cases, however, we are also entitled to bring an action at the place of performance of the delivery obligation in accordance with these Terms and Conditions or an overriding individual agreement or at the buyer's general place of jurisdiction. Overriding statutory provisions, in particular regarding exclusive responsibilities, remain unaffected.

Status: October 2018