

General conditions of sale (version 08/2004)

Art. 1 - General area of validity

The conditions of supply and delivery of the suppliers are to be exclusively valid in this respect. Such shall also be valid for all future supplies and deliveries. All alterations in the conditions of supply and delivery are to be effective as soon as the buyers receive knowledge thereof. The general conditions of the business of the buyers are not to be valid in this respect. All arrangements made between the suppliers and the buyers for the purpose of the execution of this present agreement shall require to be given in writing. Such shall be also valid for any individual agreements in divergence of these present conditions of supply and delivery. Any divergences are only to be valid for individual supplies and deliveries. These present conditions of supply and delivery shall only be valid for enterprises in matters governed by Art. 24 of the "AGBG Allgemeine Geschäftsbedingungen" (the German Federal Statute Law Code governing general conditions of business).

Art. 2 - Offerings, tenders - offer documentation - technical alterations

The offerings or tenders of the suppliers are to be deemed subject to being unsold, in so far as nothing to the contrary is mentioned in any offerings or tenders and order confirmations. The suppliers hereby reserve their proprietary rights and copyrights in all illustrations, technical drawings, calculations and any sundry documentation. Such may not be made accessible to third parties. The suppliers hereby reserve the right to make technical alterations when such serve technical progress or the improved use and operational safety of the plant and equipment.

Art. 3 - Pricing - conditions of payment

Price constructions - in the absence of any special agreement to the contrary - are deemed to be "ex works", to exclude the cost of packaging, which will be separately invoiced. Payments are to be gross in cash without any deduction whatsoever to the designated account of the suppliers; being 20% upon order, 75% upon indication of readiness for consignment and the remainder within 30 days of the date of the indication of readiness for consignment. Bills of exchange and cheques will only be accepted as settlement when the charges for discounting and collection are for the account of the buyers. Should payments be deferred or made later than agreed, interest at a rate of 5% per annum over the prevailing bank rate for the time being of the German Bundesbank will be charged, without the necessity of any special reminder of arrears to be notified. Setoffs against any counter financial claims or counter indemnities are hereby excluded, in so far as such are not undisputed or legally determined by the courts. The suppliers hereby reserve the right to alter their prices to an appropriate extent, when any reduction or increase in costs may occur after the conclusion of the contract. Such are to be evidenced to the buyers upon demand, if so required.

Art. 4 - Delivery time period

The time period for delivery is to commence with the dispatch of the order confirmation, but not before the clarification of all technical queries. Compliance with the delivery time period presupposes that the buyers have regularly fulfilled their duties to render the required part payments and otherwise to collaborate with the suppliers within the

Art. 5 - The passing of perils

The perils pass to the buyers, at the latest with the dispatch of the subject matter to be delivered and even then, when only partial deliveries are consigned or the suppliers have agreed to adopt other services in this respect, e.g. consignment charges, carriage- or erection charges. Should the buyers so require, the suppliers will cover the consignment under a goods-in-transit insurance and the charges for such are to be for the account of the buyers.

Art. 6a - Warranty for deficiencies and indemnity liabilities

The warranty rights of the buyers presuppose, that they have complied in a regular manner with their mandatory inspection and complaint rendering duties as required under Arts. 377 and 378 of the "HGB - Handelsgesetzbuch" (the German Federal Statute Law Code governing commercial transactions). Should the consignment be deficient or should any assured characteristics be missing, then the suppliers are initially under a duty to select to make improvements in the subject matter of the consignment or to provide replacement supplies. Should the removal of the deficiencies fail to be carried out or a replacement consignment not be made, then the buyers shall be entitled to select to require annulment of the contract or reduction in the supplies. In regard to third party products and deficiencies in materials, the liability of the suppliers is to be limited to the assignment of the indemnity claims, which they shall have against the subcontracted supplier of the third party products. No liabilities can be accepted for any natural wear and tear in the subject matter of the consignment. The buyers are to grant the suppliers the requisite time and opportunity to undertake all reasonably estimated and requisite appearing improvements and replacements of the consignment. All liability is to be excluded consequent to any improper alterations or reinstatement work on the subject matter of the consignment undertaken by the buyers or third parties without the prior approval of the suppliers. The cost of all necessary improvements is to be for the account of the suppliers. Such shall however not apply for increased expenditure caused by the fact, that the subject matter of the consignment has been transported after delivery to a location other than the domicile or the business premises of the buyers. In the case of small equipment, the suppliers reserve the right to demand the return of the subject matter of the consignment to their works for the undertaking of improvements. Should the complaint of the buyers prove to be unjustified, then the cost of replacement is to be for the account of the buyers. In so far as nothing to the contrary shall hereinafter be mentioned, all further claims of the buyers - on what grounds soever - are excluded hereunder. The suppliers are therefore not liable to indemnify damages not physically occurring to the subject matter of the consignment itself; in particular, not for loss of profits nor in respect of any other encroachment on the assets of the buyers. Any preceding release from liability shall not apply for premeditated or grossly negligent causes of damages. In so far as the suppliers can not be held responsible for any premeditated or grossly negligent contractual infringements, indemnities for liability are to be limited to any foreseeable, typically occurring damages. Should the subject matter of the sale fail to exhibit an assured characteristic, then the suppliers are to be liable to indemnify under Arts. 463 and 480 II of the "BGB - Bundesgesetzbuch" (the German Federal Civil Law Code) for damages consequent upon non-fulfilment. Such shall however not apply when the purpose of any assurance merely extends to the purposes of contractual compliance and not to the risk of any subsequent damages from deficiencies. The duration of the warranty time period is to be 6 months calculated from the point in time of the passing of the perils. The time period of the duration is to be statute barred and is also to apply to claims for the reinstatement of consequential deficiency damages, in so far as no claims for tort can be asserted. The preconditions for warranty claims are the regular servicing and maintenance of the subject matter of the consignment and the appropriate documentation of such. Warranty claims are to be excluded hereunder in so far as complaints concern spare parts or accessories not supplied by the suppliers, or as a result of the fact, that the technical and technological user instructions or servicing and maintenance recommendations of the suppliers have not been followed. A warranty for the mechanical bearings of HF spindles and motor spindles with revolution speeds over 15,000 rpm will only be granted for an operating time of 1,000 hours of technical application.

Art. 6b - Warranty for deficiencies - Supplement to the theme "Software"

As established in the terms relevant to pre-suppliers of control software, purchasers of software products that later are discovered to contain defects are neither entitled to make claims based merely on irrelevant deviation from the agreed-upon quality nor based on non-reproducible software errors. Likewise, no obligation to remedy a defect exists if the error encountered could be avoided by reasonable and appropriately suited entry routines.

Should the problem deal with software components whose source code is not possessed by Spinner (external control software from e.g. Siemens or Fanuc, etc.), then Spinner is only obligated to remedy defects to the degree that Spinner possesses an error-free version thereof, or that such can be made available by exertion of a reasonable resource expenditure AND the implementation thereof is possible with a reasonable software resource expenditure. If a hardware upgrade should prove necessary to enable running the new software, then the hardware portion of costs is to be paid by the system user demanding remedy of the defect.

Art. 7 - Release of the suppliers from liabilities

The buyers are to keep the suppliers harmless to full extent from all claims of third parties, which may be raised against the suppliers as a result of product liability or on similar legal grounds, when and in so far as supplies and services of the buyers may cause or be contributable to such claims from third parties.

Art. 8 - Entitlement of the suppliers to withdraw

Should, after the conclusion of a contract, a worsening in the financial position of the buyers occur, or should the suppliers subsequently come to know of a worsening in the financial position of the buyers existing at the point in time of the conclusion of a contract, of which they could not have previously been acquainted, then the suppliers shall be entitled hereunder, to withdraw from the contract under setoff of all expenditure incurred, or to demand surety for the contractual consideration due. A worsening in the financial position of the buyers is in particular to be assumed when the buyers become insolvent.

Art. 9 - Place of jurisdiction - place of fulfilment

The place for the fulfilment of the supplies and payment settlement as well as the place of jurisdiction in respect of all direct or indirect disputes arising out of the contractual relationship, is the headquarters of the suppliers; but the suppliers are to be entitled hereunder, to litigate against the buyers at the court of the place of domicile (registered office) of the buyers.

Art. 10 - Reservation of property rights

The suppliers hereby reserve their rights in the property of the subject matter of the consignment until receipt of all financial claims outstanding at the point in time of the conclusion of the contract, also to include all financial claims from subsequent orders, repeat orders and replacement orders. In case of any contractually infringing behaviour, in particular by arrears in making settlement payments, the suppliers shall be entitled hereunder to repossess the subject matter of the consignment. The repossession or mortgaging of the subject matter of the consignment is not to represent a withdrawal from the contract, subject to any other agreement made to the contrary. The buyers are under a duty hereby to treat the subject matter of the consignment with all due care. The suppliers are to be entitled hereunder to contract insurance for the account of the buyers against fire, water damage, theft and sundry other perils at new value, in so far as the buyers have not evidenced the contracting of such insurance themselves. Should servicing, maintenance and inspection routines be requisite, the buyers are to carry such out in due time for their own account. The buyers may not mortgage the subject matter of the consignment nor otherwise assign such as a surety. The buyers are to inform the suppliers with immediate effect of any attachment as well as confiscation of the subject matter of the consignment, or of any other such legal action taken on the part of third parties. The buyers are only to be entitled hereunder, to sell the subject matter of the consignment onward in the normal course of business, after the suppliers have given their approval thereto in writing. In such cases, the buyers hereby assign to the suppliers at this point in time already, all financial claims in the amount of the final onward sale invoice (to include the value added tax due), which accrues to the buyers from their customers or from any third parties and, this is to be independent of the fact as to whether the subject matter of the consignment has been onward sold after being processed or without processing. The buyers are to be entitled hereunder to collect such financial claims even after the assignment of such to the suppliers. The entitlement of the suppliers to collect such financial claims themselves is to remain unaffected thereby. The suppliers however bind themselves hereunder, not to collect such financial claims as long as the buyers fulfil their payment settlement commitments, do not fall into arrears and, in particular do not make application to the court for the opening of bankruptcy-, composition- or insolvency proceedings or when a suspension of payments is in existence. When such shall be the case, then the suppliers can demand, that the buyers reveal the identity of the assigned financial claims and the name of the debtor, give all information necessary for undertaking the collection thereof, pass over the associated documentation and inform the debtors (third parties) of such assignment. The suppliers bind themselves hereunder to release the sureties, to which they are entitled, upon the demand of the buyers in so far as the realisable value of the sureties to the suppliers shall exceed the claims to be secured by more than 10%, and the selection of the sureties to be released is to remain a matter for the suppliers

Art. 11 - All inclusive compensation for cancellations

Should the buyers withdraw from the contract, the suppliers are to be indemnified for all performance and services provided up to that point in time. In all cases however, the suppliers are to be entitled hereunder to demand, either a processing fee of up to 20% of the value of the order or compensation for the actual expenditure incurred, without having to evidence the extent of the actual indemnity due to them.

Art. 12 - Validity of this present agreement

This present agreement is to remain binding even when one or any of the individual points in its terms and conditions become invalid. The German law is exclusively to be employed in its interpretation. Any contract stamp duties will be invoiced.

Art. 13 - Recycling of old machines

Spinner GmbH guarantees to their machine users for all machines built between the year of 1991 and today to take back the machines at the end of its life for disassembly and recycling of the valuable materials according to environmental protection rules. This disassembly and recycling is free of charge for the user of the machine if he transports the machine CIF Sauerlach factory of Spinner on its own expenses.

Art. 14 - Export regulations of dual-use-goods

The CNC machine tools made by us are considered to be dual-use-goods and require therefore possibly a licence when they are exported to other countries which do not belong to the European Community. That's why we point out to all of our customers that the resale to third countries maybe require a permit by the German authorities and that the seller must observe in such a business the legal rules of the Federal Republic of Germany in the framework of existing legislation for foreign trade. In such a business it's the exporter who is responsible to check whether a licence is required and if necessary to carry out the procedure to get the export licence.