

General Terms and Conditions
no.: 01/2008 of TAR-Maschinen OHG,
Otto-Brenner-Str. 5. 51503 Rösrath
(called TAR in the following text) - as at July 1st, 2008



I. General

1. The present General Terms and Conditions no. 01/2008 shall apply exclusively with regard to all business relationships between TAR and the purchaser including any future business relationships. Any other purchase terms or general terms and conditions of the purchaser are not accepted in any way and shall not be applied. TAR is entitled to amend its General Terms and Conditions no. 01/2008 after prior notification in order to apply to all future business relationships with the purchaser.
2. In the case of a framework agreement between the purchaser and TAR, the present General Terms and Conditions will apply both to the framework agreement and the individual order.

II. Contract Conclusion

1. All offers by TAR will be non-binding and will remain without engagement. Any documents belonging to the offer such as illustrations, drawings, weight and measure data are only approximate values unless TAR explicitly declares them to be binding. If TAR provides the purchaser with drawings or technical documents on the technical purchase item, they will remain the property of TAR.
2. Orders by the purchaser will be binding for him. If there is no other written confirmation by TAR, the delivery or invoice will be regarded as the order confirmation.
3. In the case the purchaser is a merchant, the written confirmation by TAR will exclusively be authoritative for orders and agreements unless the purchaser immediately objects to it in writing. This applies in particular to orders and agreements placed or made verbally or by telephone. Any notification submitted to TAR will no longer be regarded as immediate if it is not received by TAR within seven days.

III. Delivery Date, Delivery Volume, Delayed Delivery

1. Delivery dates and deadlines are regarded as only agreed upon approximately if TAR has not given explicit confirmation in writing that they are binding. If any details of the order remain unsettled in due time by the purchaser and the purchaser does not perform all preliminary work on time, the delivery dates will be delayed accordingly. Delivery dates will be regarded as having been complied with upon notification of readiness for dispatch.
2. TAR is entitled to make partial deliveries provided that this does not fall below the reasonable minimum quantity.
3. The purchaser is obligated to inspect the delivery note and provide a receipt. Any objections are to be made to TAR immediately in writing. This failing, the delivery volume for which the receipt was given will be regarded as having been accepted.
4. In the case of delayed delivery due to operational breakdown, official measures, absence of supplies to TAR or force majeure, the delivery deadline will be adequately extended. There is also a case of force majeure in the case of labour disputes including strikes and legal lockouts at TAR or at companies providing pre-supplies to TAR. Claims by the purchaser to damage compensation are excluded in these cases to the extent set out in paragraph VII (General Limitation of Liability).
5. If any damage is incurred to the purchaser by a delivery delay caused by TAR, the purchaser may demand damage compensation, excluding further damage compensation claims, to the amount of 0.5 % for each week of delay, but at maximum 5% of the value of the affected part of the total consignment. In the case of delayed delivery, the purchaser may rescind the contract after stipulation of an adequate period of grace and with the explicit declaration that after lapse of this period he will not accept performance if performance does not occur within the period of grace. Any further claims in the case of delayed delivery, in particular damage compensation claims are excluded according to the terms set out in paragraph VII (General Limitation of Liability).

IV. Prices, Terms of Payment

1. Prices are excluding VAT, shipping, customs duties, postage, packaging, insurance and other expenses. The prices given for new machines are calculated according to the prices that are valid on the delivery date. Packaging is charged at net cost price; any return of the packaging material is excluded.
2. In the absence of special agreements, invoices are due for payment immediately without deduction.
3. If the purchaser is in arrears with payment, TAR has the right to charge default interest of 10% above the basic interest rate. Claims on the basis of specific default damage are not excluded.
4. The purchaser will only have the right of set-off if his counterclaims have been recognised by declaratory judgement, are uncontested or recognized by TAR.

V. Passing of Risks, Inspection

1. Risk will pass to the purchaser upon commencement of loading or dispatch of the delivery item, namely also if partial deliveries are made or TAR has assumed other services such as shipping expenses or delivery and assembly and/or commissioning. In so far as the delivery item is subject to factory acceptance, acceptance is definitive with regard to the passing of risk. Acceptance must be carried out immediately on the date for acceptance, alternatively following notification by the supplier of readiness for acceptance, and may not be refused by the purchaser due to the existence only of an insignificant defect.
2. If dispatch or inspection is delayed due to reasons for which TAR is not liable, risk will pass to the purchaser from the date of notification of readiness for dispatch and acceptance.

VI. Guarantee, Notice of Defects

1. TAR will be liable as follows for delivery defects, excluding any further claims:
 - 1.1 With new products, the guarantee periods with private utilisation (purchase of consumer items, § 474 BGB) are 24 months as of the passing of risks, and with commercial and/or professional utilisation 12 months as of the passing of risks.
 - 1.2 With second-hand products, the guarantee period with private utilisation (purchase of consumer items, § 474 BGB) are 12 months as of the passing of risks, and with commercial and/or professional utilisation, any guarantee is excluded. Second-hand

machines and the accessories still present are delivered in the same condition they are on conclusion of the contract. Any liability for obvious and hidden defects is also excluded in the case the machine has not been inspected previously by the purchaser except in those cases the seller has not informed the purchaser about known defects in a willful or roughly careless way.

2. The term set out in paragraph 1 will not apply in the case of guaranteed features or willful breach of essential contractual duties. Such claims by the purchaser as well as claims based on damage not incurred to the delivery item itself are excluded in accordance with the terms in Section VII (General Limitation of Liability) to the extent permitted by law. In the case the defect is rectified or a replacement provided within the framework of the guarantee, the guarantee period will not commence again.
3. Features are only guaranteed if they have explicitly been defined as guaranteed in the contract. Verbal statements and statements in TAR's documents do not contain any guarantees. Samples, measurements, DIN regulations, specifications and other data on the make of the delivery item serve for specification purposes and do not constitute any warranted characteristics. If the materials to be used by TAR are specified in the contract, this only guarantees compliance with the specification and not suitability of the materials for the contractual purpose. TAR is only obligated to give notices if the materials are obviously unsuitable.
4. Damages caused by external impact, improper assembly and handling, defective operation or maintenance, corrosion or normal wear are excluded from the guarantee. In particular, the guarantee does not cover normal wear of wear parts. Wear parts are all rotating parts, all drive elements, and all tools. With the sale of a machine, these guarantee regulations are based on an application with one-shift running operation.
5. The purchaser must duly inspect the consignment immediately after receipt at his own expense and report any defects, wrong deliveries, evident non-approvable wrong deliveries or shortfalls to TAR immediately in writing. A limitation period of seven days as from receipt of the consignment will apply to the deadline to report a complaint. Hidden defects shall be reported to TAR in writing immediately after detection. In other respects, §§ 377 and 378 HGB will remain unaffected in the case of a mutual trade transaction of two trading parties.
6. Any quality defects in a partial delivery do not entitle the purchaser to reject the rest of the agreed volume unless the purchaser can prove that acceptance of only part of the consignment would be unacceptable for him if the circumstances are taken into account.
7. If the purchaser detects a defect, he shall not modify or process the item or provide it to third parties but shall give TAR adequate opportunity for verifying the existence of the defect and providing any necessary make-up performance (rectification or replacement); this failing, no claims can be made on the basis of defects. The purchaser is entitled to rectify the defect personally or have third parties rectify it and demand compensation of the expenses incurred only in urgent cases of jeopardy of operational safety or for the prevention of disproportionately great damage. In such cases, TAR must be informed immediately. Regardless of the existence of a defect, the guarantee claims will be extinguished if the purchaser or a third party carries out modification or repair work without the consent of TAR.
8. Damage during transport shall be reported immediately to TAR. The purchaser is obligated to settle the necessary formalities with the shipping agent, in particular all necessary conclusions for the safeguarding of rights of regress towards third parties. If commercially standard breakage, loss or similar remains within acceptable boundaries, complaints cannot be made.
9. In case of justified complaints, TAR may, at its own discretion, either repair the defective item or replace it. Multiple rectifications of items are permissible.
10. In the case of rectification of a defect, TAR will be obligated to bear all expenses necessary for defect rectification including transport, travel, work and material costs provided that the expenses do not increase by transfer of the purchase item to a place other than the place of performance.
11. If TAR fails to observe an adequate period of grace for make-up performance as defined by § 439 BGB without rectifying the defect or providing a replacement or if TAR is unable to carry out a rectification or provide a replacement or the rectification or replacement fails or is otherwise denied by TAR, the purchaser, who is not a consumer, will only have the right to rescind the contract or have the purchase price reduced, excluding all further claims regarding the delivery item.

VII. General Limitation of Liability

1. If the delivery item cannot be used by the purchaser in accordance with the contractual purpose due to the fault of TAR because of failure to provide advice or faulty advice before or after conclusion of the contract or by breach of other contractual ancillary duties (e.g. operating or maintenance instructions), the terms set out in paragraphs VI and VII.2 will apply accordingly, and further claims by the purchaser are excluded.
2. For damage not incurred to the delivery item itself TAR will only be liable, irrespective of legal basis, in cases
 - of wilful intent;
 - of gross negligence of the owner / of the executive bodies or of the management;
 - of culpable injury of life, physical integrity, and health;
 - of defects TAR has maliciously concealed or whose absence TAR has guaranteed;
 - of defects of the delivered item, to the extent TAR is liable for personal or material damage to privately used items according to the Product Liability Act.

In case of culpable breach of essential contractual duties, TAR will also be liable in the case of gross negligence by non-executive employees and in the case of minor negligence; in the latter case this is limited to the damages reasonably foreseeable and typical for a contract; any further claims are excluded.

VIII. Retention of Title, Securities

1. TAR retains the proprietary rights of the delivery object until all payments arising from the delivery contract have been made. In the event that the purchaser acts contrary to the contract, especially concerning late payment and an institution of insolvency proceedings, TAR is entitled to take back the delivered item after due warning and the purchaser will be obligated to hand out the delivered item. In the case of seizure or other interventions by third parties, the customer shall immediately inform TAR in writing.
2. TAR is entitled to insure the delivery item against theft, breakage, fire, water and other types of damages at the expense of the purchaser, unless the purchaser can prove that he has insured the delivery item himself.
3. The purchaser has the right to resell the delivery item within the proper course of business. However, he already assigns all claims against the purchaser or third parties arising from the resale to TAR with the conclusion of the contract and regardless of whether the goods subject to the retention of title are resold in unprocessed or processed form. The purchaser is authorized to collect these claims after the assignment, too. The authorization of TAR to collect the claims itself remains unaffected

by this but TAR will be obligated not to collect the claims as long as the purchaser duly complies with his payment obligations. TAR may demand that the purchaser discloses the assigned claims and their debtors, provides all necessary information for collection, submits the corresponding documents, and notifies the debtors of the assignment. In case the delivery item is resold together with other goods not belonging to TAR, the claim of the purchaser against the customer to the amount of the delivery price agreed upon between TAR and the purchaser will be regarded as having been assigned.

4. The processing or reshaping of the items subject to retention of title is always carried out by the purchaser for TAR. If the item subject to the retention of title is processed or inseparably mixed with other items not belonging to TAR, TAR will acquire co-ownership of the new item on the basis of the ratio of the value of the item subject to the retention of title to the other processed or mixed items at the time of processing or mixing. If goods by TAR are combined with other movable items to form a uniform item or are inseparably mixed and the other item is to be regarded as the main item it, is agreed that the purchaser proportionally assigns co-ownership insofar as the main item belongs to him. The purchaser will safeguard the ownership or co-ownership for TAR. The same as for the goods subject to the retention of title will apply to items produced from processing, restructuring, combining and mixing.
5. TAR is entitled to demand adequate security for satisfaction of the purchaser's obligations. TAR is obligated to release the securities the purchaser (it) is entitled to the extent to which the realizable value exceeds the claims to be secured by more than 20% insofar as they have not yet been settled.

IX. Performance Duty, Infeasibility and Non-Performance

1. The delivery duties and delivery deadlines of TAR are subject to the proviso of proper, complete and timely delivery of supplies and raw materials to TAR.
2. If TAR is unable to perform the entire contract prior to the passing of the risk due to a circumstance for which it is not liable, the purchaser is allowed to rescind the contract.
In the case of partial infeasibility or partial impossibility, the above provision will only apply to the respective part. In this case, the purchaser may only rescind the contract if he can prove a legitimate interest in rejecting the partial delivery. Further claims by the purchaser, in particular damage compensation claims, are excluded according to the provisions stipulated in Sections VI and VII.
3. If the infeasibility or impossibility occurs during the delayed acceptance without the fault of the purchaser, the latter will still be obligated to fulfillment.
4. After TAR rescinds the contract or after stipulation of a period of grace with warning or a rejection, respectively, TAR will be entitled to use the goods taken back as it chooses.

X. Place of Performance, Place of Jurisdiction, Choice of Law

1. Unless otherwise contractually agreed upon, the place of performance for payment and delivery of the goods is the TAR business domicile.
2. If the purchaser is a merchant, a body corporate organized under public law or a special fund under public law, the business domicile of TAR is the place of jurisdiction for all legal disputes including those within the scope of actions filed under the summary proceedings based on bills of exchange, promissory notes and checks; legal proceedings against TAR can only be instituted there.
3. The laws of the Federal Republic of Germany shall apply exclusively, excluding international private law, standard international law and the UN Sales Convention.

XI. Legal Validity, Data Protection

1. Should a term of the present General Terms and Conditions be or become invalid, this will not affect the general validity of the contract. The invalid term has to be replaced by the provision of the law. In no case will the respective term in the present General Terms and Conditions be replaced by the purchaser's business terms.
2. Any amendments of or addenda to the present contract must be confirmed in writing by TAR in order to be valid; this also applies to a waiver of the contractual writing requirement itself.
3. Legally relevant declarations of intent such as cancellations, notices of rescission, demands for a purchase price reduction or damage compensation will only be valid if made in writing.
4. TAR is entitled, with regard to the business relationship, to process and to store the data received about the customer in terms of the German Data Protection Act, even if these data originate from any third parties and to have these data processed and stored by third parties authorized by TAR.