

**General Sales and Delivery Conditions**  
**for S+B Maschinenhandelsgesellschaft mbH (hereinafter: S+B)**  
**(Status: November 2016)**

**I. General**

1. These general sales and delivery conditions have exclusive application to all business relationships between S+B and its buyers and prospective buyers. If there is a frame agreement between S+B and the buyer, then these general sales and delivery conditions apply to both the frame agreement and the individual order. These conditions also apply to future transactions with the buyer, to the extent that these transactions are of a related nature.
2. S+B does not recognise contradictory conditions or conditions from the buyer that deviate from these sales conditions, unless S+B has explicitly agreed to their validity in writing. The general sales and delivery conditions from S+B also apply, even when S+B executes the delivery to the buyer without reservation, despite having knowledge of contradictory or deviating conditions from the buyer.
3. These general sales and delivery conditions are an integral part of the contract. All agreements made between S+B and the buyer for purposes of executing this contract are recorded in this contract in writing.
4. The general sales and delivery conditions from S+B apply only to contractors pursuant to § 310 Para. 1 BGB (German Civil Code), legal persons under public law or special funds under public law.

**II. Contract Conclusion, Client Protection**

1. Offers from S+B are non-binding and subject to alteration. They can be revoked by S+B at any time up to the receipt of the written declaration of acceptance or up to the dispatch of the delivery object. Documentation belonging to the offer, such as images, drawings and weight and measurement specifications, are only approximate values, to the extent that they have not been explicitly declared as binding. If S+B provides the buyer with drawings or technical documentation about the purchased technical items contained in the delivery, these drawings and technical documentation remain the property of S+B.
2. Orders from the buyer are binding for the buyer. Unless S+B provides a written confirmation to the contrary, the delivery or invoice represent confirmation of the order. If an order from the buyer is to be treated as an offer pursuant to § 145 BGB, then S+B can accept this offer within a period of four weeks. The time limit begins from the point when the order is submitted. If S+B dispatches the good(s) before expiration of this time period, then, as an exception to the rule, the contract is concluded even without a written order confirmation.
3. If the buyer is a merchant, then the written confirmation from S+B has sole relevance for the content of orders and agreements in connection with the contract conclusion, provided the buyer does not promptly contradict this in writing. This applies particularly to orders and agreements made orally or by telephone during contract conclusion. In all cases, a notification to S+B is no longer considered prompt when it has not been received by S+B within seven days.
4. If a machine is not offered by S+B ex stock and if the location and address are provided to or verified for the prospective buyer, the prospective buyer pledges neither to pass the address on to third parties nor to purchase the verified machine directly or via third parties from anyone other than S+B. Information provided by S+B about machine locations and prospective buyers is for the exclusive use of the recipient alone and may not be passed on to third parties without the written consent of S+B. The prospective buyer also pledges to conduct all price negotiations and concluding negotiations solely via S+B. In the case of culpable non-compliance, the prospective buyer is to reimburse S+B for lost profits in the full amount of the difference between S+B's verified procurement price and the price offered by S+B to the prospective buyer. The orders, purchase transactions and deliveries arising subsequent to verification of machines for purchase or sale and the resulting initiation of business relationships are to be considered as having been brokered by S+B.

**III. Delivery Deadline, Scope of Delivery, Delivery Delay**

1. Delivery appointments and periods are to be considered as only approximately fixed, unless S+B has provided a written assurance at the time of contract conclusion specifying them explicitly as binding. The start of a delivery period specified by S+B presupposes the timely and proper fulfilment of the buyer's obligations, particularly the clarification of all technical questions; should this not be the case, then the delivery dates are extended accordingly. The right of objection to the unfulfilled contract remains reserved. The delivery period has been complied with when the delivery object has left the S+B facility by the time of the period's expiry or when S+B has prepared the delivery object for dispatch and notified the buyer of its readiness for delivery.
2. S+B is entitled to make partial deliveries, provided they do not fall short of a reasonable minimum size.
3. The buyer is to examine and acknowledge the bill of lading. Any objections are to be reported to S+B promptly in writing. Otherwise, the acknowledged quantity delivered is considered verified.
4. The delivery deadline is extended reasonably for circumstances connected with labour disputes, particularly strikes and lockouts, force majeure, governmental measures, the non-appearance of deliveries from S+B's suppliers, as well as in the event of unforeseeable, unavoidable impediments lying outside S+B's sphere of influence, to the extent that such impediments impact the production or delivery of the delivery object. This also holds when the circumstances affect subcontractors. In important cases, S+B will inform the buyer promptly of the beginning and ending of such impediments. Force majeure also exists in the case of labour dispute measures, including strikes and lawful lockouts, in the operations of S+B or its sub-suppliers. In these cases, buyer claims to loss reimbursement are excluded within the limitations of Section VII (Other Liability).
5. Should S+B fall behind schedule, the buyer must give S+B—to the extent provided by law—a reasonable extension. After expiry of this extension, the buyer can withdraw from the contract if he has not by this time received word that the good(s) are ready for dispatch.
6. In case of delay, S+B is liable, according to the statutory provisions, provided the underlying purchase contract is a fixed date transaction acc. to § 286 Para. 2 No. 4 BGB or acc. to § 378 HGB (Commercial Code). S+B is also liable according to the statutory provisions if, as a consequence of a delivery delay for which S+B is responsible, the buyer is entitled to assert that his interest in continued fulfilment of the contract has ceased.
7. S+B is also liable according to the statutory provisions if the delivery delay results from an intentional or grossly negligent contract violation for which S+B is responsible; culpability on the part of S+B's representatives or agents is to be ascribed to S+B. If the delivery delay results from an intentional or grossly negligent contract violation for which S+B is responsible, then S+B's damage compensation liability is limited to the foreseeable, typically occurring loss.
8. S+B is also liable according to the statutory provisions to the extent that the delivery delay for which S+B is responsible is the result of culpable violation of a significant contractual obligation; in this case, however, the damage compensation liability is limited to the foreseeable, typically occurring loss.
9. If the buyer suffers a loss through a delivery delay for which S+B is culpable, then the buyer, under exclusion of further compensation claims, can demand reimbursement in the amount of 0.5 % for each week of delay, with an upper limit of 5 % of the value of the affected part of the total delivery. Further claims pertaining to delivery delays are excluded, particularly claims for loss compensation, provided no other consequence results from the above-mentioned stipulations in numerals 6. through 8.

10. If the buyer falls behind in the acceptance procedure or culpably violates any other cooperation obligations, then S+B is entitled to demand reimbursement for any losses arising as a consequence, including any additional expenditures. The right to further claims remains reserved. Provided the above-mentioned conditions prevail, the risk of accidental loss or deterioration of the purchased good is transferred to the purchaser at that point in time when the purchaser enters into acceptance delay or debtor's delay.

#### **IV. Prices, Payment Conditions**

1. The prices do not include value added tax, freight, customs duties, postage, packaging, insurance or other expenses. The calculation of brand-new machine prices is based on the prices in effect on the delivery day. Packaging is calculated at cost; redemption is excluded.
2. Barring special agreements, invoice payments are due immediately, without deductions. The deduction of an early payment discount is only permitted on the basis of a special written agreement.
3. S+B sends its invoice in advance of dispatching the good(s). Dispatching takes place only against pre-payment, unless otherwise stipulated. If, in special instances, it has been agreed that the delivery should not take place against pre-payment, the invoice will nonetheless be sent. The invoice payment is still due if the delivery of dispatch-ready goods should be impossible due to reasons within the buyer's scope of risk.
4. If the buyer enters payment arrears, the statutory provisions pertaining to the consequences of payment arrears shall apply. The right to assert a specific arrears damage claim is reserved.
5. The buyer is only entitled to offset rights if his counter claims are legally binding, uncontested or recognised by S+B. Moreover, the buyer is only authorised to exercise a right of retention inasmuch as his counter claim is based on the same contractual relationship.
6. If S+B is obligated to an advance performance and if, after concluding the contract, a substantial risk arises to S+B's payment claim due to a significant deterioration in the financial circumstances of the buyer, then S+B can demand pre-payment or security within a reasonable time period and refuse performance until fulfilment of this demand. If the buyer refuses or if the time period expires without effect, then S+B is entitled to withdraw from the contract. Moreover, S+B can prohibit the resale of goods delivered under retention of ownership, demand their return or the transfer of immediate possession at the buyer's own expense and revoke a direct debit authorisation.

#### **V. Risk Transfer, Acceptance**

1. The risk of accidental loss or deterioration of the good(s) is transferred to the purchaser at the start of the loading or dispatch of the delivery object or with the handover to the freight carrier, haulage contractor or shipping agent, at the latest upon departure from the facility/warehouse. This also applies for partial deliveries or when S+B undertakes further performances, for example, payment of shipping costs or delivery and setup and/or commissioning.
2. If the delivery object must be inspected and approved, then this acceptance procedure is the definitive criterion for the risk transfer. The acceptance procedure must be executed promptly at the time of the acceptance appointment or, alternatively, after the announcement from the deliverer about the acceptance readiness, and may not be refused by the buyer on the basis of the mere existence of an insubstantial deficiency.
3. If the good is ready for dispatch and the dispatch is delayed for reasons for which the buyer is responsible, then the risk is transferred to the buyer at the time the announcement of the dispatch readiness is received by the buyer. The same holds for delays in the acceptance procedure and the receipt of the announcement of acceptance readiness.
4. S+B is obligated to obtain a transport insurance policy only when the buyer explicitly demands it. The buyer bears the costs.

#### **VI. Notice of Defects, Warranty**

1. Defect claims on the part of the buyer presuppose that the buyer has properly fulfilled his obligatory inspection and defect notification obligations pursuant to § 377 HGB. The inspection and notification obligations also extend to the assembly instructions. S+B is to be promptly notified of objections in writing and the defective parts in question are to be sent back to S+B when S+B so demands. Here, S+B assumes the transport costs when the defect claim is justified. If the buyer fails to fulfil these obligations or undertakes changes to the part in question without the consent of S+B, then the buyer loses the right to any possible material defect claims.
2. Transport damage is to be reported promptly to the seller. The buyer is to manage the necessary formalities with the freight hauler, particularly regarding the performance of all appraisals needed to permit recourse action against third parties. Provided breakage, loss or the like remain within a customary and reasonable limit, they cannot be objected to.
3. A warranty from S+B is excluded for the sale of used products, unless some other arrangement is stipulated hereinafter. Used machines and any remaining accessories are delivered by S+B in the condition they were in at the time the contract was concluded. All liability for apparent or hidden defects is also excluded when the machine has not been inspected in advance by the buyer, unless S+B fraudulently concealed known defects or assumed a warranty for the quality of the item.
4. Should a defect exist in an item purchased new, S+B is entitled for purposes of rectification to choose between eliminating the defect or delivering a new, non-defective item. The buyer must always provide S+B an opportunity for rectification within a reasonable time period. In cases of defect elimination or replacement delivery, S+B is obligated to bear all expenses associated with the rectification, particularly transport costs, travel costs, labour costs and material costs, up to the amount of the purchase price, provided these do not increase as a consequence of the purchased item being moved to a location other than the place of performance, unless such a movement is in accordance with the item's normal usage. However, S+B must only bear removal and installation costs if the prerequisites for fault-based loss compensation liability exist. If the rectification fails, then the buyer is entitled to demand either withdrawal or abatement, as he chooses. If the defect represents an immaterial breach of duty, then the buyer can neither withdraw from the contract nor demand loss compensation instead of the entire performance.
5. S+B is liable according to the statutory provisions if the buyer asserts loss compensation claims based on wilful intent or gross negligence, including wilful intent or gross negligence on the part of an S+B representative or agent. Provided S+B is not accused of any wilful contract violation, damage compensation liability is limited to the foreseeable, typically occurring loss.
6. S+B is liable according to the statutory provisions if it culpably violates a significant contractual obligation; in this case as well, the damage compensation liability is limited to the foreseeable, typically occurring loss.
7. Provided the buyer is otherwise entitled to claim reimbursement for loss instead of performance on account of a negligent breach of duty, S+B's liability is limited to the foreseeable, typically occurring loss.
8. Liability due to culpable violations of life, body or health remain unaffected. This also applies to the compulsory liability pursuant to the product liability law.
9. Provided that something different has not been stipulated above, liability is excluded. In particular, liability is also excluded for defects
  - due to corrosion or typical wear. In particular, the warranty does not extend to wear on consumable parts. Consumable parts are all rotating parts, all drive components and tools. For the sale of a machine, its use in single-shift operation serves as the basis for these warranty provisions;

- arising from damage due to external factors, improper treatment and/or setup or usage, incorrect assembly and/or commissioning, deficient operating, maintenance, overloading or incorrect and/or negligent treatment by the buyer or his customers;
  - as a consequence of the buyer carrying out improper modifications or repair work without the consent of S+B;
  - if statutory installation and handling regulations or those issued by S+B are not adhered to by the buyer or his acceptance personnel, unless the defect cannot be traced back to this non-adherence.
10. If the buyer notices a defect, he may not modify or work on the delivery object, nor may he hand it over to a third party. Instead, he must provide S+B sufficient opportunity and time to verify the defect and, if necessary, carry out the necessary rectification (defect elimination or delivery of a new, non-defective item); otherwise, all defect claims lapse. Only in urgent cases of endangerment to operational safety and/or to prevent disproportionately extensive damage—and here, S+B is to be notified immediately—does the buyer have the right to eliminate the defect or have it eliminated by a third party and to demand from S+B reimbursement of the necessary expenditures. Independent of the existence of a defect, the warranty claims also expire if the buyer or a third party undertakes modifications or repair work without the permission of S+B.
11. Provided nothing else has been agreed to, the warranty period extends for 12 months after the effected delivery of the goods delivered by S+B to the buyer. This does not apply to the extent that the good is typically used for a structure and has caused the defect. If the delivery is delayed through no fault of S+B, the liability lapses at the latest 18 months after its delivery readiness. The statutory warranty periods remain unaffected in the following cases:
- Losses from the violation of life, body or health,
  - Losses based on an intentional or grossly negligent breach of duty by S+B, its legal representatives or agents.

The limitation period also remains unaffected in the case of a delivery recourse claim according to §§ 478, 479 BGB; it amounts to five years, calculated from the time of delivery of the defective item.

#### **VII. Other Liability**

1. A more extensive liability for loss compensation than that stipulated in III. and VI.—regardless of the legal nature of the asserted claim—is excluded. This applies in particular to loss compensation claims due to a fault during contract conclusion, due to other breaches of duty or due to criminal claims for compensation of property damage pursuant to § 823 BGB.
2. The limitation pursuant to Para. 1 also applies if the buyer demands the reimbursement of useless expenditures instead of a claim for reimbursement of losses in place of performance.
3. To the extent that S+B's liability is excluded or limited, this applies also to the personal liability of S+B's staff members, employees, workers, legal representatives and agents.
4. The statutory regulations concerning burden of proof remain unaffected.

#### **VIII. Retention of Ownership, Securities**

1. S+B retains ownership of the delivery object until all payments arising from the business proceeding with the buyer have been received. In case the buyer fails to conform to the contract, particularly regarding payment arrears and filing for the commencement of an insolvency proceeding, S+B is entitled to retrieve the delivery object after a warning and the buyer is obligated to relinquish it. The retrieval of the purchased item by S+B represents a withdrawal from the contract. After retrieval of the purchased item, S+B is authorised to utilise it; the utilisation revenues—after reasonable utilisation costs have been deducted—are to be offset against the buyer's accounts payable.
2. The buyer is obligated to handle the purchased item carefully; in particular, he is obligated, at his own expense, to adequately insure it against fire damage, water damage, and theft. If the buyer does not provide S+B with evidence of having concluded such an insurance policy, then S+B is entitled to conclude such an insurance policy itself at the buyer's expense. If maintenance and inspection measures are necessary, the buyer must carry these out on schedule at his own expense.
3. In case of pledging or other third-party interventions, the buyer is to promptly notify S+B in writing so that S+B can file a suit pursuant to § 771 ZPO. To the extent that the third party is unable to reimburse S+B for the in-court and out-of-court costs of a suit pursuant to § 771 ZPO, the buyer is liable for the loss incurred by S+B.
4. The buyer is entitled to re-sell the delivery object in the course of his normal business affairs. However, the buyer assigns to S+B at the moment the purchase contract is concluded the final invoiced amount (including VAT) of S+B's claim from all those claims accruing to him from the re-sale vis a vis the purchaser or a third party. This holds regardless of whether the retained good was re-sold without further processing or after further processing. The buyer is empowered to collect these claims even after the assignment. Here, S+B's authority to collect the claims itself remains unaffected; However, S+B pledges not to collect the claims provided the buyer properly complies with his payment obligations from the collected revenues, does not fall into payment arrears and, particularly, provided that no application for commencement of a settlement or insolvency proceeding has been filed and no suspension of payment exists. However, if this is indeed the case, then S+B can demand that the buyer notify S+B of the assigned claims and their debtors, specify all information needed for their collection, surrender the associated documentation and inform the debtor (third party) of the assignment. If the delivery object is re-sold along with other goods not belonging to S+B, then the buyer's claim against the purchaser is to be considered assigned in the amount of the delivery price agreed upon by S+B and the buyer.
5. The processing or re-forming of retained items is always undertaken by the buyer for S+B. If the retained item is processed with other objects not belonging to S+B, then S+B acquires ownership of the new item in proportion to the value of the purchased item (final invoiced amount, including VAT) relative to the other processed objects at the time of the processing. Moreover, for the item resulting from the processing, the same conditions apply as for the retained item that has been delivered.
6. If the purchased item is irrevocably commingled with other objects not belonging to S+B, then S+B acquires co-ownership of the new item in proportion to the value of the purchased item (final invoiced amount, including VAT) relative to the other commingled objects at the time of the commingling. If the commingling occurs in such a way that the buyer's item is to be considered the main item, then it holds as agreed that the buyer transfers pro rata co-ownership to S+B. The buyer holds the so arisen sole-ownership or co-ownership for S+B. If the purchased item is joined together with other moveable objects to an integrated item and if the other object is to be considered the main item, then it holds as agreed that the buyer transfers pro rata co-ownership to S+B, to the extent that the main item belongs to him. Moreover, for the item resulting from the processing, re-forming or joining together or commingling, the same conditions apply as for the retained item.
7. For purposes of securing S+B's claims, the buyer also assigns to S+B the claims accruing against a third party through the connecting of the purchased item with a piece of property.
8. S+B is entitled to demand reasonable security for the proper fulfilment of the buyer's obligations. Upon demand of the buyer, S+B pledges to release the security to which it is entitled insofar as the realisable value of the securities exceeds by more than 10% the claims to be secured; the choice of the securities to be released falls to S+B.

#### **IX. Fulfilment Obligations, Impossibility**

1. S+B's delivery obligations are subject to the reservation of S+B being properly, completely and promptly delivered itself. In case of improper or untimely delivery by suppliers or previous owners of goods, S+B is not liable for the impossibility of

delivery or delivery delays for which S+B bears no responsibility. If such an improper or untimely delivery makes it significantly more difficult or impossible for S+B to deliver or perform its obligations and if the impediment is not merely temporary, then S+B is entitled to withdraw from the contract. If the impediment is merely temporary, then the delivery or performance periods are extended and/or the delivery or performance dates are shifted a length of time equivalent to the duration of the impediment plus a reasonable start-up period. If, as a consequence of the delay, the acceptance of the delivery or performance represents an intolerable burden for the buyer, then he can withdraw from the contract by informing S+B via a prompt written declaration.

2. If S+B's entire performance becomes impossible before the transfer of risk, the buyer can withdraw from the contract. If it becomes partly impossible, this provision applies only to the affected part. In this case, however, the buyer can withdraw from the entire contract if he can provide evidence of a legitimate interest in refusing the partial delivery.
3. If the impossibility arises during a delay in acceptance on the part of the buyer or if the buyer is solely or overwhelmingly responsible for the circumstance that makes S+B's performance unnecessary, then the buyer remains bound to compliance.
4. After S+B's withdrawal from the contract and/or after issuing a deadline with threat of refusal, S+B is entitled to freely utilise retrieved goods.

**X. Place of Performance, Jurisdiction, Applicable Law**

1. Unless otherwise contractually agreed to, the place of performance for payment and delivery of goods is the business headquarters of S+B.
2. The exclusive jurisdiction for all disputes is the S+B headquarters, provided the buyer is a merchant pursuant to HGB, a legal person under public law or special funds under public law. S+B is also entitled to sue the buyer at his headquarters. Moreover, the jurisdiction for all claims of the contractual partners arising from the business relationship is the S+B headquarters when the buyer has no domestic place of general legal jurisdiction.
3. The law of the Federal Republic of Germany under exclusion of the UN Convention on the International Sale of Good (CISG) applies to these sales and delivery conditions and to the legal relationships between S+B and the buyer resulting from this contract.

**XI. Legal Validity, Data Protection**

1. Should one of the provisions of these general sales and delivery conditions be or become invalid, it shall have no effect on the validity of the remainder of the contract. The statutory provision shall apply in its place. Under no circumstances is the affected provision in these general sales and delivery conditions to be replaced by the buyer's conditions of business.
2. Legally relevant declarations of intent, such as cancelations, declarations of withdrawal, demands for reduction of purchase price or loss compensation, are only valid when made in writing.
3. Pursuant to the Federal Data Protection Act, S+B is entitled to process and store data about the buyer that has been received in connection with the business relationship—including data originating with third parties—and to have such data processed and stored by third parties that have been commissioned by S+B.