

General Terms of Sale and Delivery of GMW Machines GmbH (GMW)

I. General

All supplies and services are provided exclusively subject to our Terms of Sale even in the event that the Buyer expressly prescribes otherwise and we remain silent regarding its terms. The Purchaser is deemed to have acknowledged our General Terms of Sale and Delivery by placing the order.

II. Conclusion of the Contract

1. Quotations from GMW are non-binding and without obligation. Documents forming part of the quotation such as illustrations, drawings, indications of weights and dimensions are merely approximate values unless expressly declared as binding. In the event that GMW provides the Buyer with drawings or technical documents in respect of the technical item for sale and delivery, such documents remain the property of GMW.
2. Orders placed by the Buyer are binding on the latter. If no written confirmation is otherwise received from GMW, delivery or the invoice is deemed to be confirmation of the order.
3. If the Buyer is a registered merchant, the written confirmation from GMW exclusively determines the contents of the orders and agreements unless the Buyer objects in writing without delay. This applies in particular to orders and agreements made verbally or by telephone. A notification to GMW has been made "without delay" only if GMW receives it within seven days.

III. Delivery Periods, Scope of Delivery, Default in Delivery

1. Delivery dates and delivery deadlines are deemed to have been agreed as merely approximate unless expressly described by GMW as binding in a written undertaking. In the event that the Buyer fails to clarify all details of the order in time or perform all prior services required of the Buyer on time, the delivery periods are extended accordingly. Delivery dates are deemed to have been complied with upon notification of readiness for delivery.
2. GMW is entitled to make part deliveries, provided that these are not below the minimum that is reasonable.
3. The Buyer must examine the delivery note and acknowledge the same. Any objections must be notified to GMW in writing without delay. Otherwise, the delivery quantity acknowledged is deemed to be accepted.
4. In the event of delays in delivery as a result of operating stoppages, measures by the authorities, absence of deliveries from GMW's own suppliers or force majeure, the delivery period is extended accordingly. Also deemed to be force majeure are actions relating to industrial disputes including strikes and legal lockouts in the works of GMW or its own suppliers. In such cases, claims to damages on the part of the Buyer are excluded within the limits of Section IX (General Limitation of Liability).
5. If the Buyer suffers damages as a result of a delay in delivery for which GMW is responsible, then, subject to the exclusion of any further claims to compensation, the Buyer may require damages for the same in the amount of 0.5% for each week of delay, however, a maximum of 5% of the value of the affected part of the total delivery. In the event of default in delivery, the Buyer may, after setting a reasonable extension and after expressly declaring that he shall refuse to accept the goods after this period, withdraw from the contract if delivery is not made within this extension. More extensive claims in the event of default in delivery, in particular claims for damages, are excluded subject to the provisions of Section IX (General Limitation of Liability).

IV. Protection of Suppliers and Customers

Each interested party undertakes not to poach our customers or suppliers in the event that we, as a third party, indicate an item for sale or purchase, and he undertakes not to enter into negotiations regarding price or contract with regard to the items for sale or for purchase either directly or indirectly or via third parties without our express written consent, but exclusively through us. Any follow-on orders, contracts of sale and deliveries resulting from such business relations are also deemed to have been arranged through us and are subject to these conditions. Our indications of machine locations and potential buyers are intended solely for the recipient and may not be passed on to third parties without our written consent. In the event of contraventions of the aforementioned provisions, we are entitled to compensation for damages.

V. Prices

Prices do not include value added tax, freight, customs duty, postage, packaging, insurance or other costs. Binding for the prices of brand new machines are the prices in application on the date of delivery. Packaging will be charged at cost. It cannot be returned. Unless otherwise agreed, the price includes loading onto lorries only for deliveries from our warehouse in Ennepetal.

VI. Terms of Payment

Our invoices are payable in cash without any deductions within the agreed period, whether or not the item for sale has arrived at the destination and whether or not there are any complaints pending. If no special agreements have been made, invoice amounts are always due for payment prior to the loading of the goods, at the latest within 14 days of readiness for shipment, if there is any reason for which we are not responsible why collection and, therefore, payment of the goods has not taken place within this period of time.

VII. Warranty, Notification of Defects

1. GMW is liable for defects in the delivery, to the exclusion of all further claims, as follows:

1.1 The warranty period is 24 months from the time of passing of the risk for new products for private use (consumer goods purchase, § 474 Civil Code (BGB)) and 12 months for commercial and/or professional use.

2. The provisions of Para. 1 do not apply in the event of guaranteed characteristics or in the event of fault for the breach of essential contractual duties. Claims of this type on the part of the Buyer as well as claims for damages that did not occur to item delivered itself are excluded under the provisions of Section IX (General Limitation of Liability) to the extent permitted by statute. Improvement or replacement of the goods under warranty does not restart the warranty period.

3. Characteristics are guaranteed only if expressly described as such in the contract. Verbal indications or indications in the documents of GMW do not constitute guarantees. Specimens, samples, dimensions, DIN provisions, specifications and other indications of the characteristics of the items for delivery are intended for specification purposes only and do not constitute guaranteed characteristics.

If the materials to be used by GMW are specified in the contract, this only guarantees conformity with the specification and not of the suitability of the materials for the contractual purpose. GMW is only obliged to draw attention to the same in the event of their obvious unsuitability.

4. Damages due to external influences, improper erection and treatment, defective operation or maintenance, corrosion or normal wear and tear are excluded from the warranty. In the latter case in particular, the warranty does not extend to the wear and tear of wearing parts. Wearing parts are all rotating parts, driving parts and tools. In the event of the sale of a machine, these warranty provisions are based on use in one-shift operation.

5. The Buyer is obliged to properly examine the goods delivered without delay after receipt at his own expense and to notify any defects, wrong deliveries, wrong deliveries that are obviously incapable of approval or short deliveries to GMW without delay. An exclusion period of seven days from the date of receipt of the delivery applies to notification. Concealed defects must be notified to GM in writing without delay after discovery. Otherwise § 377 and § 378 Commercial Code (HGB) remain unaffected in the event of a commercial transaction for both parties as registered merchants.

6. Any quality defects in part of a delivery do not give the Buyer the right to reject the remainder of the quantity delivered unless the Buyer can prove that, under the circumstances, it is unreasonable for him to accept only a part of the delivery.
7. If the Buyer discovers a defect, he may not modify or process the item delivered or hand it over to third parties, but must allow GMW sufficient time and opportunity to satisfy themselves of the defects and, if necessary, to undertake the necessary subsequent performance (improvement or delivery of spare parts); otherwise all claims based on defects are extinguished. In urgent cases of a risk to operating safety or to avert disproportionately greater damage in which case GMW must be notified without delay, the Buyer has the right to eliminate the defect himself or have it eliminated by third parties and to require refund of the necessary expenses from GM. Independently of the existence of a defect, the warranty claims are extinguished if modifications or repair work are done by the Buyer or a third party without the approval of GMW.
8. Transport damage must be notified to the Seller without delay. The Buyer must take care of the necessary formalities with the driver of the freight vehicle, in particular, all necessary reports to preserve rights of recourse against third parties. Provided that usual commercial breakage, disappearance or similar remain within reasonable limits, no complaint can be made for this reason.
9. In the event of a justified complaint, GMW shall decide at its discretion whether to undertake subsequent improvement of faulty goods or deliver replacements. Repeated subsequent improvements are admissible.
10. In the event of elimination of the defect, GMW is obliged to pay all expenses incurred for the purpose of eliminating the defect, in particular transport costs, travelling expenses, labour and material costs provided that these are not increased by the fact that the purchased item has been taken to a place other than the place of performance.
11. If GMW allows a reasonable extension, that has been granted to it for the purpose of subsequent performance as defined in § 439 Civil Code (BGB), to pass without eliminating the defect or delivering a replacement, or if subsequent improvement or delivery of a replacement is impossible for GMW or fails or is refused by GMW for other reasons, a Buyer who is not a consumer only has the right, to the exclusion of all further claims affecting the item delivered, to withdraw from the contract or to reduce the purchase price.

VIII. Reservation of Title

Delivery is always made subject to reservation of title. The goods delivered remain the property of the supplier until complete satisfaction of all liabilities on the part of the Buyer that arise from the business relations. The Buyer is only permitted to resell or transfer title to the goods as security to third parties if this reservation of title has been extinguished by payment.

IX. General Limitation of Liability

1. If the Buyer cannot use the item delivered in conformity with the contract through the fault of GMW as a consequence of the failure to advise or defective advice before or after conclusion of the contract or through the breach of other ancillary contractual duties (e.g. operating or maintenance instructions), Sections VII and VII.2 apply to the exclusion of all further claims on the part of the Buyer.
2. For damage that did not occur to the item delivered itself, regardless of the basis in law, GMW is liable only for
- intent,
 - gross negligence on the part of the proprietor or company organs or executive employees,
 - being at fault for harm to life, physical injury or harm to health
 - defects that they have maliciously concealed or whose absence they have guaranteed,
 - in the event of defects in the item delivered insofar as liability exists under the Product Liability Act for personal injury or material damage to privately used items.

In the event of being at fault for a breach of essential contractual duties, GMW is liable also in the event of gross negligence of the part of non-executive employees and for slight negligence, in the latter case limited to the reasonably foreseeable damages typical of the contract; further claims are excluded.

X. Performance Obligation, Impossibility and Non-Performance

1. The delivery obligation and the delivery period of GMW is subject to proper, full and punctual supply by its own suppliers.
2. If it becomes impossible for GMW to undertake complete performance prior to the passing of the risk for reasons for which GMW is responsible, the Buyer may withdraw from the contract. In the event of partial impossibility or partial incapacity, the above rule applies only to the relevant part. The Buyer can, in this case, withdraw from the whole contract if he is able to prove a justified interest in refusing the part delivery.
More extensive claims of the Buyer, in particular claims for damages, are excluded under the provisions of Sections VI and VII.
3. If impossibility arises during default in acceptance or through the fault of the Buyer, the latter remains obliged to performance.
4. After the withdrawal of GMW from the contract, or after setting a deadline with threat of rejection, GMW is entitled to dispose freely of the returned goods.

XI. Place of Performance, Court of Jurisdiction, Governing Law

1. Unless otherwise agreed, place of performance for the payment and delivery of goods is the registered office of GMW. Court of jurisdiction is the Local Court of Schwelm (AG) or Hagen Regional Court (LG)
2. If the Buyer is a merchant or a legal entity under public law or a public-law special fund, the registered office of GMW is court of jurisdiction for all legal disputes, also for bill of exchange or cheque proceedings; complaints against GMW can only be brought before that court.
3. The law of the Federal Republic of Germany applies exclusively to the exclusion of private international law, unified international law and the UN convention on the sale of goods.

XII. Legal Validity, Data Protection

1. Should any provision of these Terms of Sale and Delivery be or become invalid, this shall not affect the validity of the remaining provisions of this contract. The statutory rules shall apply in its place. Under no circumstances is the relevant provision of these General Terms of Sale and delivery substituted by the terms of business of the Buyer.
2. Any changes or supplements to the contract must be confirmed in writing by GMW in order to be valid; this also applies to any deviation from the contractual requirement for the written form.
3. Declarations of intent that have considerable legal consequences such as terminations, declarations of withdrawal from the contract, demands for reductions in the selling price or compensation for damages are valid only if made in writing.
4. GMW is entitled, in connection with the business relations, to process and store data received about the Buyer in accordance with the Federal Data Protection Act, even if such information comes from third parties, and to have such data processed and stored by third parties appointed by GMW.