

GENERAL TERMS OF SALE AND DELIVERY FOR MIXACO MACHINES AND EQUIPMENT

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I. General

(1) Our terms of sale, delivery and payment (terms of sale for short hereinafter) apply exclusively; we will not recognise contrary terms or customer terms other than our terms of sale unless we expressly agree in writing to their applicability. Our terms of sale also apply in the event that we in awareness of contrary terms or customer terms other than our terms of sale execute the delivery to the customer.

(2) All agreements reached between us and the customer for the purposes of executing this contract have been recorded in writing in this contract.

(3) Our terms of sale apply only to companies in the sense of § 310 Section 1 of the Bürgerliches Gesetzbuch (BGB – German Civil Code).

(4) Our terms of sale will also apply to all future business with the customer.

II. Quotation and quotation documents

(1) Our quotation is not binding. If the customer's order is to be qualified as a quotation in accordance with § 145 BGB, we will be able to accept it within two weeks.

(2) We reserve ownership and copyrights to images, drawings, pricings and other materials and samples. This also applies to such written documents that are identified as "confidential". The customer requires our express prior consent before these may be forwarded to third parties.

III. Prices and terms of payment

(1) Insofar as not otherwise indicated in the confirmation of the order, our prices are "ex works" and exclude packaging, freight and fitting. We reserve the right to suitably adjust our prices if after conclusion of the contract cost reductions or cost increases, particularly due to collective bargains or material price fluctuations, occur. We will prove such changes to the customer on request.

(2) The statutory value added tax is not included in our prices; it will be shown separately in the invoice to the statutory amount on the day of invoicing.

(3) The deduction of discounts requires a separate written agreement.

(4) Insofar as nothing else arises out of the order confirmation, the purchasing price will be due for net payment (without deduction) within 30 days of the date of invoice. The statutory rules concerning the consequences of arrears will apply.

(5) The customer will only be entitled to offset claims if its counter claims have been determined in a legally effective manner, if they are undisputed or if they have been recognised by us. The customer will only be entitled to withhold claims if the above conditions have been met.

IV. Reservation of ownership

(1) We reserve ownership in the purchased item until receipt of all payments arising out of the business relationship with the customer. In the event of the customer breaching the

contract, particularly in the event of payment arrears, we will be entitled to take back the purchased item. The retrieval of the purchased item by us will constitute a withdrawal from the contract. After retrieval of the purchased item, we will be entitled to its utilisation, the revenue from such utilisation must be set off against the customer's liabilities – minus any reasonable costs of utilisation.

(2) The customer will be obliged to treat the purchased item with care; it is in particular obliged to sufficiently insure the item at its own cost against damage by fire, water and theft at the value of the new item. Insofar as maintenance and inspection work is necessary, the customer must carry out such work on time and at its own cost.

(3) In the event of seizures or other interventions by third parties, the customer must immediately notify us in writing in order to enable us to take action in accordance with § 771 Zivilprozeßordnung (ZPO – German Civil Procedure). Insofar as the third party is not able to reimburse us for the court and out-of-court costs of such action in accordance with § 771 ZPO, the customer will be liable for any losses we suffer.

(4) The customer will be entitled to resell the purchased item within proper business; however, it already assigns to us the equivalent of the final invoiced total (including VAT) of our claim that it gains from the resale against its purchasers or third parties irrespective of whether the purchased item has been resold without or after further processing. The customer remains entitled to recover this claim even after its assignment. Our authority to recover the claim ourselves remains unaffected by this. However, we undertake not to recover the claim for as long as the customer meets its payment duties from the revenues made, does not fall into arrears and particularly no application for court-composition or insolvency proceedings has been made or payments have been stopped. If this is the case, however, we will be able to request the customer to inform us of the assigned claims and those owing them, provide us with all the information required for the collection, hand over the corresponding materials and inform the debtors (third parties) of the assignment.

(5) The processing or modification of the purchased item by the customer will always be carried out on our behalf. If the purchased item is processed with other items not belonging to us, we will acquire co-ownership in the new item to the ratio of the value of the purchased item (total invoiced amount, including VAT) in relation to the other processed items at the time of processing. Otherwise, the same will apply to the item created through processing as applies to the conditionally supplied purchased item.

(6) If the purchased item is mixed inseparably with other items not belonging to us, we will acquire co-ownership in the new item to the ratio of the value of the purchased item (total invoiced amount, including VAT) in relation to the other processed items at the time of processing. If mixing is effected in such a way that the customer's item must be regarded as the main item, it is deemed to have been agreed that the customer has assigned co-ownership to us on a proportional basis. The customer will hold the thus created sole ownership or co-ownership on our behalf.

(7) The customer will, for the purposes of securing our claims against it, also assign those claims against third parties that are created through the combination of the purchased item with real-estate to us.

(8) We undertake to release the securities to which we are entitled on request by the customer to the extent that the realisable value of our securities exceeds the value of our claims to be secured by more than 10%; the choice of the securities to be released will be at our discretion.

V. Delivery time and delayed delivery

(1) The commencement of our stated delivery dates requires the clarification of all technical questions.

(2) The fulfilment of our delivery obligations further requires the punctual and proper fulfilment of the customer's duties. The objection of non-fulfilment of the contract remains reserved.

(3) Within the scope of reasonableness for the customer, we are entitled to make part shipments.

(4) If the customer delays acceptance or otherwise culpably breaches duties of cooperation, we will be entitled to demand that the loss we incur to this extent, including any additional expenses, be refunded. We reserve the right to make further claims.

(5) Insofar as the conditions set out in Section (4) have been met, the risk of accidental destruction or accidental worsening of the purchased item will be transferred to the customer at that point in time where it has delayed acceptance or where its performance as the debtor becomes delayed

(6) Our liability for damages in the event of delayed delivery will be governed exclusively in accordance with Clause IX of these terms of sale.

VI. Force majeure and condition of deliveries to us

(1) The condition of correct and punctual deliveries to us as the supplier remains reserved.

(2) In the event of force majeure and other obstacles to performances that we could not have foreseen and for which we were not responsible – including labour disputes, scarcity of raw materials, interruptions to operations, transport obstacles, official measures – also affecting our suppliers – we will be entitled to postpone the delivery for as long as the obstacle to the performance obtains. We will immediately inform the customer about the unavailability or the delayed availability of the item to be supplied and in the event of withdrawal immediately refund the customer's counter performance.

VII. Passage of risk

(1) Insofar as not otherwise stated in the confirmation of order, deliveries "ex works" have been agreed. The risk of accidental destruction or accidental worsening will also pass to the customer on dispatch should we have assumed the dispatch costs or other additional performances or make a part shipment.

(2) Insofar as acceptance is to be made, this will be decisive to the passage of risk.

(3) Insofar as the customer requires, we will cover the shipment with a transport insurance; the costs incurred to this extent will be borne by the customer.

VIII. Claims in the event of defects

(1) Claims in the event of defects by the customer will be conditional to the customer having fulfilled its inspection and complaint duties to which it is bound by § 377 Handelsgesetzbuch (HGB – German Commercial Code).

(2) Insofar as the purchased item is defective, we at our discretion will be entitled to make subsequent performance in the form of remedying the defect or delivering a new defect free item. In the event of the defect being remedied, we will be obliged to bear all expenses, particularly transport, travel, work and material costs, required for the purposes of remedying the defect insofar as these do not increase as a

result of the purchased item having been moved to a place other than the place of fulfilment.

(3) If subsequent performance fails, the customer will be entitled to make the other statutory claims relating to defects. Usually, subsequent remedy is regarded as having failed after the second unsuccessful attempt. The customer will only be able to make claims for damages in accordance with Clause IX of these terms of sale.

(4) The customer's claims in the event of defects will be subject to a period of limitation as set out in Clause X of these terms of sale.

IX. Liability

(1) We will be liable for damages purely on the basis of the following provisions:

(2) We will be liable in accordance with statutory provisions insofar as the customer makes claims for damages that are based on intent or gross negligence, including intent or gross negligence by our representatives or vicarious agents. Insofar as we cannot be charged with intentional or grossly negligent breach of contract, the liability for damages will be limited to the foreseeable typically occurring loss; in this event, our liability will be limited for each loss event to a maximum of one million euros for damage to property and to a maximum of 100,000.00 euros for losses that are purely economical.

(3) We will be liable in accordance with the statutory provisions insofar as we culpably breach a significant contractual duty; in this event, liability for damages will be limited to the foreseeable typically occurring loss.

(4) Insofar as the customer is entitled to replacement of the loss instead of the performance, our liability will also be limited within the scope of Section (3) to replacement of the foreseeable typically occurring loss.

(5) Liability for culpable injury to life, limb or health remains unaffected; this also applies to mandatory liability in accordance with the product liability law and liability within the scope of a guarantee.

(6) The above liability limitations will also apply in the event that the customer instead of a claim for compensation of the loss demands the replacement of wasted expenses in place of the performance.

(7) Insofar as compensation liability towards us is excluded or limited, this will also apply in view of the personal liability for damages by our employees, workers, staff, representatives and vicarious agents.

X. Period of limitations

(1) The period of limitation for claims arising out of defects is twelve months from the statutory start of the period of limitation.

(2) An exclusion time limit of 18 months applies to the period of limitation for other claims by the customer that are not subject to the period of limitation for claims arising out of defects. It commences from the time of knowledge of the damage and the identity of the person causing the damage.

(3) The above provisions do not affect the statutory periods of limitation in the following cases:

- In the event of delivery bottlenecks in accordance with §§ 478, 479 BGB;
- For defects to structures/construction materials set out in §§ 438 Section 1 No. 2; 634a Section 1 No. 2 BGB;
- For damages arising out of the culpable injury to life, limb or health;

- For cases of intent or deceit or gross negligence by us, our legal representatives or vicarious agents ;
- For the customer's right to withdraw from the contract in the event of a breach of duty for which we are responsible and which does not lie in a defect in the purchased item or the works;
- For mandatory liability in accordance with the product liability law;
- For claims within the scope of a guarantee.

XI. Customer's duties of cooperation and provision

(1) The customer must fully inform us of all facts relevant to the execution of our delivery and/or performance within a reasonable time limit. We are not obliged to check the data, information or other performances for correctness and completeness insofar as the respective circumstances of the individual case do not provide any cause to do so or the duty to carry out checks has not been expressly assumed as a contractual obligation.

(2) Insofar as work is carried out on the customer's premises, our staff must at no charge be provided with the required workplaces (including heating, power, water, etc.), the necessary equipment and heavy tools (e.g. lifting gear, compressors) and consumption items and materials (e.g. assembly wood, wedges, packing, lubricants, fuels). The purchaser must in particular make the material to be processed on the machines supplied by us available for working-in and test purposes. The customer must protect the materials and tools we supply against harmful effects.

(3) The customer will as a major contractual duty assume responsibility for all agreed performances or cooperation and provision performances arising out of the nature of the matter being provided in the required quality and at the agreed times without additional cost to us. Insofar as necessary, it must make its own personnel available to this extent.

XII. Software utilisation

(1) A non-exclusive right of utilisation is granted to the purchaser insofar as software is included in the scope of delivery. The software will be provided for use on the delivered item for which it is intended. Use on more than one system is prohibited.

(2) The purchaser may only copy, revise and translate software or convert the software's object code to its source code to the legally permissible extent (§§ 69a ff. Urhebergesetz – UrhG (Copyright Law)). The purchaser undertakes not to remove or modify manufacturer information – particularly copyright information – without our prior consent.

(3) All other rights to the software and documentation, including copies, will remain with us or the software supplier. The awarding of sub-licences is not permitted.

XIII. Assembly and service performances

If and insofar we assume assembly or service performances (repairs, maintenance), Mixaco's special assembly and service terms will apply. It is agreed that these terms for such performances will in all cases apply additionally.

XIV. Place of jurisdiction – place of fulfilment

(1) Insofar as the customer is a business person, our place of business in Neuenrade will be the place of jurisdiction; we, however, will be entitled to take action at the court of the customer's domicile.

(2) The law of the Federal Republic of Germany will apply; the application of the United Nations Convention on Contracts for the International Sale of Goods is excluded.

(3) Insofar as not otherwise stated in the confirmation of order, our place of business in Neuenrade will be the place of fulfilment.

XVI. Final provisions

(1) Should individual provisions of the above provisions be or become ineffective, this will not affect the effectiveness of the other provisions. The ineffective provisions should be replaced with such provisions that come closest to the commercial purpose of the contract while taking the interests of both parties into account.

(2) All previous terms of sale and delivery have herewith become void.

Information in accordance with § 33 Bundesdaten-Schutzgesetz (BDSG – Federal Data Protection Act): the customer's data will be processed electronically.