

# GENERAL TERMS AND CONDITIONS OF SALE 01.01.24:

## Art. 1 – General area of validity

1. Our Terms and Conditions of Sale (GTCS) shall also apply exclusively for all future deliveries and services, even if such are not the subject of a further separate agreement. All alterations are to be effective as soon as the buyer receives knowledge thereof. Any terms and conditions of business of the buyer that are contrary to or deviate from our Terms and Conditions of Sale (GTCS) shall not apply unless we have agreed to them in writing.
2. All agreements between us and the buyer must be in writing. Any divergences are only to be valid for individual supplies and deliveries.
3. Our GTCS shall only apply to entrepreneurs (within the meaning of §§ 14, 310 I BGB (German Civil Code)).

## Art. 2 – Offers – agreed quality – technical alterations

1. Our offer is not binding unless otherwise stated in the offer and order confirmation (OC).
2. The subject matter of the contract is exclusively the sold delivery item with the agreed quality and the intended use as specified in our underlying description in the brochure, the offer and the enclosed order confirmation. Any unilateral ideas of the buyer regarding the agreed quality or a specific intended use shall require our written consent, even if they have otherwise already become known to us.
3. We reserve the right(s) to
  - a. all property rights and copyrights to illustrations, drawings, calculations and other documents,
  - b. implement technical changes in the sense of technical progress, improved use or operational safety,
  - c. recalculate our offer in the event of unilateral subsequent changes to the scope of the order by the buyer.

## Art. 3 – Pricing – conditions of payment

1. In the absence of any special agreement to the contrary, our prices are deemed to be "ex works", plus separately invoiced packaging costs.
2. In the absence of any other express agreement, the price agreed in the order confirmation is a fixed price until delivery of the subject matter of the contract. If the buyer unilaterally postpones the delivery date to a later date, we reserve the right to change our prices appropriately if cost increases occur after the original delivery date, which will be proven to the buyer upon request.
3. The statutory value added tax (VAT) is not included in our price and will be shown separately in the invoice at the statutory rate on the day of invoicing.
4. Payments shall be made in cash in accordance with the conditions of payment stated in the offer and in the order confirmation without any deduction whatsoever directly to the designated account of the supplier. We do not accept bills of exchange or cheques. In the event of default or deferral of payments, the statutory provisions shall apply. We reserve the right to claim further damages.
5. Offsetting with counterclaims is excluded unless these are undisputed or have been legally established.

## Art. 4 – Delivery time period

1. The time period for delivery is to commence with the dispatch of the order confirmation, but not before the clarification of all necessary technical queries.  
Compliance with the delivery time period also requires the prior and timely fulfilment of partial payment and other cooperation obligations on the part of the buyer. If the fulfilment of such obligations be delayed, then the delivery date will be appropriately postponed, but corresponding at least to the duration of the delay. We reserve the right to plead non-performance of the contract.
3. The delivery period shall be extended appropriately in the event of unforeseeable events outside our sphere of influence, insofar as these events demonstrably have a considerable influence on the completion or delivery of the delivery item. This also includes temporary impediments to performance through subcontractors or suppliers for which we are not responsible. Partial deliveries are permissible.
4. In accordance with the statutory provisions, we shall be liable if a delay in delivery is due to an intentional or grossly negligent breach of contract for which we or our representatives or vicarious agents are responsible; in these cases, however, our liability shall be limited to the foreseeable typical damage.

5. In the event of unilateral postponement of the delivery date by the buyer to a later date or in the event of non-collection of finished machines at the agreed time, we reserve the right to charge the costs incurred for the storage and preservation of the machine. In the absence of individual proof, a lump sum for damages of 0.5% of the order value per week of postponement, but no more than 10% of the order value, shall be assessed, whereby the buyer shall be permitted to prove that no damage or significantly less damage than the assessed lump sum has been incurred.

## **Art. 5 – Transfer of risk**

1. The risks shall transfer to the buyer at the latest upon dispatch of the delivery, even if partial deliveries are made or if we have assumed further services such as shipping costs, delivery or installation.
2. At the request of the buyer, we shall take out a goods-in-transit insurance for the delivery at the buyers expense.

## **Art. 6 – Liability for defects**

1. The buyers warranty rights presuppose that he has properly fulfilled his obligations to inspect the goods and give notice of defects in accordance with Art. 377 of the HGB (German Commercial Code). A further prerequisite for the assertion of warranty claims is proper maintenance by the buyer and the appropriate documentation of such in accordance with the maintenance booklet supplied and the maintenance intervals provided for therein, unless the buyer proves that a defect is not due to a lack of maintenance or non-compliance with the intervals.
2. The subject matter of the contract shall be free from material defects if, at the time of the transfer of risk, it complies with the subjective requirements in accordance with the underlying offer, the declaration of acceptance made in this respect and the order confirmation. In deviation from the objective requirements for normal use in accordance with Art. 434 para. 3 BGB (German Civil Code), only the specific quality and suitability agreed in the aforementioned documents, together with handover in accordance with the protocol, shall apply. Accordingly, it shall not constitute a material defect if the subject matter of the contract does not correspond to a customary quality for normal use.
3. Public statements by third parties or persons in the sales chain regarding certain properties or the quality of the subject matter of the contract, whether verbally or in writing, require our express written confirmation.
4. If the delivery is defective, we shall initially be obliged, at our discretion, to remedy the defect or to deliver a defect-free item. If the rectification of defects / replacement delivery fails, the buyer may, at his discretion, withdraw from the contract or reduce the purchase price.
5. In regard to any essential third-party products and material defects, our liability shall be limited to the assignment of the liability claims to which we are entitled against the supplier of the third-party products.
6. In the event of withdrawal, we shall be entitled to demand reasonable compensation for the benefit derived by the buyer from the subject matter of the contract up until physical return of product. The compensation for use shall be calculated on the basis of a 5-year total period of use (corresponds to 10,000 operating hours in the case of normal operation) of the subject matter of the contract minus an appropriate reduction in accordance with the extent to which use was limited.
7. Liability for any consequences arising from improper modification or repair work carried out by the buyer or third parties without our prior approval is excluded; this also applies to the installation or use of spare parts or accessories not purchased from us.
8. The warranty for material defects is excluded in the event that – at the instigation of the buyer – the assembly is carried out improperly by someone other than us or our vicarious agents as well as in the event that our technical and/or technological instructions for use or maintenance recommendations are not followed.
9. We shall bear the expenses necessary for the implementation of supplementary performances. This does not apply to increased expenses incurred by the involvement of third parties on the part of the buyer or by the fact that the delivered item has been taken to a place other than the buyers place of business after delivery.
10. At our request, the buyer shall make the delivery item available to us for the purpose of supplementary performances and allow it to be transported back to our works. If a complaint claim by the buyer turns out to be unjustified, the buyer shall bear the costs for the work involved if it was not a claim for supplementary performance for which we are responsible, even if it was unknown to the buyer due to gross negligence.

11. The warranty period for freedom from defects of the delivery is 1 year, calculated starting from the transfer of risk, unless otherwise agreed in the order. In addition, the warranty period is limited to the attainment of 2000 operating hours of the system per calendar year, corresponding to a single-shift operation of 8 hours/day for 250 working days/year. Operating hours shall be deemed to be the "machine on" hours of the central operating hours counter in the switch cabinet, which starts running from the time the main switch of the machine is switched on.

12. Our liability for intentional or grossly negligent breach of duty, also on the part of our legal representatives or vicarious agents, shall be governed by the statutory provisions. Our liability for other damages in the event of a slightly negligent breach of a principal obligation, also on the part of our legal representatives and vicarious agents, shall be limited to the foreseeable direct average damage typical for the contract. We shall not be liable for the slightly negligent breach of immaterial contractual obligations.

13. Our liability, also for our legal representatives and our vicarious agents, for culpable injury to life, limb or health and for claims under the Produkthaftungsgesetz (German Product Liability Act) shall remain unaffected.

## **Art. 7 – Warranty for defects in software products**

1. In accordance with the conditions of upstream suppliers of control software, there shall be no claims for material defects for software products in the event of only insignificant deviations from the agreed functionality and in the event of non-reproducible software errors, likewise no obligation to rectify defects if the error can be avoided by means of reasonable, suitably adapted input routines.

2. Should the problem deal with software components for which we do not have the source code (external control software from e.g. Siemens or Fanuc), then we are only obligated to remedy defects to the degree that Spinner possesses an error-free version thereof, or that such a version can be obtained with reasonable effort AND the implementation thereof is possible with a reasonable software resource expenditure. If a hardware upgrade should be necessary in order to make newer software versions executable, the hardware cost share shall be chargeable to the buyer demanding the rectification of defects.

3. In the case of machines with Siemens controls, the special terms and conditions of sale of Siemens Industrie Software GmbH (SISW), which have already been made available or can be viewed in its respectively current version at any time, shall apply.

## **Art. 8 – Basic limitation of liability**

We exclude in any case any further liability for damages than stated in Arts. 6 and 7 above, in particular any liability for material damage and financial loss due to loss of production, loss of profit, loss of data and information, contractual claims of third parties, as well as financing expenses. This also applies to personal liability of our management, employees, representatives and vicarious agents.

## **Art. 9 – Indemnity**

The buyer shall indemnify us in full against all claims of third parties if and to the extent that deliveries and services of the buyer were the cause of such claims of third parties.

## **Art. 10 – Reservation of right of withdrawal**

We reserve the right to withdraw from the contract or to demand security for the delivery if, after the conclusion of the contract, a deterioration in the assets of the buyer occurs, in particular, insolvency or over-indebtedness, or if we subsequently become aware, through no fault of our own, of a deterioration in the assets of the buyer which already existed at the time of the conclusion of the contract. The expenses incurred by us in reliance on the conclusion of the contract shall be reimbursed by the buyer.

In the event of force majeure or official requirements that make it impossible or prohibit us from executing the order, we reserve the right to withdraw from the contract without claims by the buyer for non-performance.

## Art. 11 – Withdrawal and termination by the buyer

Contracts are binding for the contracting parties. If the buyer declares withdrawal from or termination of the contract without justification, he shall be liable to us for damages for all services rendered up to that point. In any case, we shall be entitled to claim a lump-sum compensation for damages or compensation for loss of value in accordance with the following scale of the order value, whereby the buyer shall be expressly permitted to prove that no damage or loss of value has occurred or that it is significantly lower than the lump-sum compensation.

If, in an individual case, we agree to the request of the buyer to cancel the order, our compensation for the cancellation shall be calculated as follows:

- a) 10% of the agreed purchase price including all ancillary services upon receipt of the order confirmation,
  - b) 30 % of the agreed purchase price including all ancillary services 30 days after receipt of the order confirmation,
  - c) 40% of the agreed purchase price including all ancillary services with the start of production of the respective machine plus the entire purchase price attributable to customer-specific options,
  - d) 60% of the agreed purchase price including all ancillary services plus the total purchase price attributable to customer-specific options after completion of the machine,
- whereby all special designs for the basic machine, the control system, the machine options, clamping devices and tool holders and services, but not commissioning, training, transportation or packaging, are to be regarded as customer-specific options.

## Art. 12 – Retention of title

1. We reserve title to the delivery item until receipt of all payments from the existing current account relationship (business relationship), whereby the reservation relates to the recognised balance.
2. In the event of conduct in breach of contract, in particular in the event of default in payment, we shall be entitled to set a deadline for performance and to withdraw from the sales contract if the deadline expires to no avail.
3. The buyer is hereby obligated to treat the delivery item with all due care. If servicing, maintenance and inspection work is required, the buyer shall carry this out in good time at his own expense.
4. For the duration of the retention of title, we shall be entitled to insure the delivery item adequately against fire, water, theft and other damage at the reinstatement value at the expense of the value as new, unless the buyer can prove that he has taken out an insurance policy himself.
5. The buyer may neither pledge the delivery item nor assign it as security. The buyers shall immediately notify us of any pledge, attachment, seizure, confiscation or other disposal by third parties.
6. A resale of the delivery item requires our written consent. In this case, the buyer already now assigns to us all claims accruing to him against third parties from the resale, irrespective of whether the delivery item has been resold without processing or after processing, up to the amount of the purchase price agreed between us including value added tax.
7. Any processing or transformation of the delivery item shall always be carried out for us. If the delivery item is processed or inseparably mixed with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the value of the delivery item (final invoice amount incl. VAT) to the other processed or mixed items at the time of processing or mixing. The same shall apply to the item created by processing or mixing as to the delivery item delivered under reservation.
8. The buyer shall remain authorised to collect this claim in our favour even after the assignment, without prejudice to our authority to collect the claim ourselves. However, we undertake not to collect the claim as long as the buyer meets his payment obligations, is not in default of payment or overindebted and no application for the opening of insolvency or composition proceedings has been filed. If this is the case, we may demand disclosure of the assigned claims and their debtors as well as all information required for collection, as well as the handing over of all related documents and disclosure of the assignment to the debtors/third parties. We undertake, at the discretion and request of the buyer, to release the securities to which he is entitled insofar as the realisable value of the securities exceeds the claims to be secured by more than 10%.

### **Art. 13 – Export of "dual-use" goods**

Our CNC machine tools can be designated as "dual-use" goods and are therefore, under certain circumstances, subject to approval by the relevant authorities when exported to other countries outside the EU. We therefore point out to all buyers, purely as a precaution, that a resale of such machines to third countries outside the EU must be legally examined in each case and that the exporter of the machine is responsible for compliance with the legal provisions of the Federal Republic of Germany (FRG) and the EU.

### **Art. 14 – Compliance with sanctions**

By accepting our offer and these General Terms and Conditions, the buyer of a SPINNER machine, accessories and spare parts expressly confirms that they will not resell or deliver the delivered goods to sanctioned countries, in particular Russia, Belarus, North Korea and all others sanctioned countries according to this product range.

We expressly point out that any violations of this assurance that become known will immediately result in a corresponding report to the German export authorities and the buyer and the product will be excluded from any support and, within the scope of our technical capabilities, the product will be shut down.

### **Art. 15 – Place of jurisdiction – place of fulfilment**

The place of fulfilment for delivery and payment as well as the place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is our head office. However, we are also entitled to bring an action against the buyer at the buyer's registered office.

### **Art. 16 – Severability clause**

If any of the foregoing terms and conditions do not become part of the contract in whole or in part or are or become invalid, the remaining terms and conditions and the contract between the parties shall otherwise remain valid. The same shall apply if a gap should arise after conclusion of the contract which requires supplementation. The content of the contract shall be governed by the statutory provisions of the Federal Republic of Germany with regard to the provisions that have not become part of the contract or are invalid.