

General Terms and Conditions of Sale and Delivery

§ 1 General Stipulations, Scope

- (1) These General Terms and Conditions of Sale and Delivery (referred to hereinafter as "Sales Terms") apply exclusively. We do not acknowledge any General Terms of the ordering party or Buyer (referred to hereinafter as "Buyer") that deviate from or are contrary to the following Sales Terms, unless we have explicitly given our written (section 126 German Civil Code) consent to their application.[1] These Sales Terms also apply if Thies GmbH & Co. KG (referred to hereinafter as "Seller") renders performance with full knowledge of conflicting or different terms and conditions of Buyer without any reservation of rights.
- (2) These Sales Terms shall only apply vis-à-vis companies, legal entities governed by public law and special-purpose public funds (public sector).
- (3) Any individual stipulation concluded in individual cases with the Buyer (including subsidiary covenants and agreements, amendments and changes) shall always have priority over these Sales Terms. A written agreement or explicit written confirmation of the content of such agreements by the Seller shall be required.
- (4) These Sales Terms also apply in their most recently included version as a framework agreement for future sales and/or deliveries to the same Buyer without the Seller having to make reference to such once again in every individual case.
- (5) Declarations and notifications of legal importance that are to be issued by the Buyer to the Seller after signing of the Agreement (for example the setting of deadlines, notices of defect, declarations of revocation or reduction in price) must always be in writing to be effective.
- (6) References to the application of statutory provisions shall only serve the purpose of clarification. For this reason, statutory provisions shall also apply even without any such clarifying note if such are not directly changed or expressly ruled out by these Sales Terms.
- (7) Buyer and Seller may transfer this Agreement (principal agreement including Sales Terms) in its entirety or assign any of their rights or obligations arising out of this Agreement to third parties only by prior written consent of the other party.

§ 2 Conclusion of the Agreement, Provided Documentation

- (1) Quotes and Offers of the Seller are – in particular with respect to the conclusion of Agreement and with regard to quantity, price and delivery period – subject to change and non-binding. This is also the case if the Seller has provided the Buyer with a catalogue, technical documentation (for example drawings, plans, estimates, calculations, references to DIN standards), other product descriptions or documents, including in electronic form. The Seller preserves all rights all rights of ownership and copyrights on these. These may only be made accessible to third parties with Seller's explicit written consent.
- (2) The order placed for the purchase object by the Buyer shall be deemed to constitute a binding contractual offer. An order shall only be deemed to be valid after written confirmation of order is issued or upon the delivery of the goods to the Buyer as agreed upon (acceptance).
- (3) This acceptance is subject to a condition precedent (section 158(1) German Civil Code): It shall only become effective if the export control laws of the Federal Republic of Germany or the European Union as well as of the USA, as far as this is applicable from the U.S. point of view and German/European law does not conflict with its application, do not (any longer) stipulate a contractual prohibition for this legal transaction and the (export) license(s) required for this legal transaction has/have been issued. The parties explicitly rule out any retroactive effect (contra section 159 German Civil Code).
- (4) The installation of the purchase object takes place based on the General Conditions of Installation and Commissioning (Installation Conditions) of the Seller, which are stipulated separately.
- (5) Drawings, illustrations, measurements, weights, or other performance data shall be binding only if expressly stipulated by written agreement; such data shall not be construed to constitute guarantees of quality.

§ 3 Prices

- (1) The price of the purchase object (purchase price) is understood to be Free Carrier delivery from the Seller's premises (FCA Incoterms® 2020), without discount or any other deductions, plus statutory VAT/sales tax. Any additional services agreed, for example destination charges, shall be charged to the Buyer in addition. In the case of deliveries and services performed into the EU, the Buyer shall provide the Seller with the Buyer's VAT-ID no.
- (2) The prices payable as per quotation respectively confirmation of order (contractual prices) are based on the current prices for raw materials and wage costs.
We reserve the right to adjust the contractual price accordingly if relevant cost increases occur after conclusion of the contract, in particular due to changes in the price of materials (cf. § 3 (2) SALES TERMS). In the same way we are obliged to proceed in case of relevant cost reductions.
Relevant material price amendments shall be deemed to exist if there are at least three (3) months between the date of the conclusion of contract and the date of delivery and if, based on the production cost portion of the metal and the producer price index for the metal as specified in para. 3 (2), there is a cumulative price amendment of at least ten (10) % in total compared to the contractual price (cf. further details: § 3 SALES TERMS).
We will prove both relevant cost reductions and relevant cost increases to the Buyer upon request. The producer price index for metal, which are particularly relevant for our machine production is regularly publicly available on the internet on the website: <https://www-genesis.destatis.de/genesis/online>, 61241-0004, GP09-24, „metals“ and can also be proven to the Buyer at any time if required. The production cost portion shares of metal, according to machine types, are expressly indicated to the Buyer by us in the quotation respectively confirmation of order.
- (3) The Buyer is responsible for the import operations, the import duties and the customs declaration according to the stipulations applicable in each case as well as any duties payable in the country of destination.

§ 4 Conditions of Payment, Default on Payment

- (1) The Seller's business place is the payment location. The purchase price and prices for additional services shall be due payable without any deductions and in the agreed currency to the Seller's bank account on the agreed date (§ 1 para. 3). The due time for payment arises however the latest upon delivery of possession of the purchase object respectively not later than eight (8) days from receiving the notification that the goods are ready for dispatch.
- (2) The Buyer shall be entitled to rights of set-off only if the Buyer's counter claims are legally established as res judicata, and are undisputed, or acknowledged by the Seller. In addition, the Buyer may exercise a retention right only if the Buyer's counterclaim is based on the same Agreement.
- (3) In the event that the Buyer is in arrears with payment, the Seller may claim interest on arrears in the amount of eight (8) percentage points above the respective base interest rate. The Seller retains the right to claim additional damage for delay due to breach of contract pursuant to CISG (e.g. but not limited to foreign currency losses in the case of liabilities in foreign currencies).
- (4) In the event that the Buyer has not cleared the agreed payment within a period of ten (10) days after receiving a reminder notice from the Seller, the Seller is entitled to declare the Agreement avoided pursuant to Art. 64 CISG by written declaration and to claim damages including claims for loss of profit (article 74 ff. CISG).
- (5) If following conclusion of the Agreement it becomes recognizable that the claim to the purchase price will be jeopardized as a result of deficient capability to render payment on the part of the Buyer (e.g. due to application for the opening of an insolvency proceeding, but not limited to this) or that the Buyer will not fulfil an important contractual obligation, the Seller shall be entitled to refuse performance and – if applicable after the setting of a deadline – revoke from the Agreement (section 323 of the German Civil Code). This is especially the case if the Buyer fails to comply with its obligation to cooperate in severe dimensions. In the case of contractual agreements on the manufacturer of unreasonable objects (custom manufacturing), the Seller may declare Revocation immediately. This shall not affect statutory provisions on the ability to waive setting a deadline.
- (6) Insofar as payments are executed by third parties, Buyer shall oblige the third party to always make the reference customer and business traceable for the Seller. In case of bank transfers, for example, this information must always be included as reference on transfer. If no such indication is given within the payment information to the Seller, the performance shall not be deemed to have been rendered vis-à-vis the Seller.

§ 5 Delivery and Default on Delivery

- (1) The delivery results FCA (Free Carrier) from the delivery plant in Coesfeld (FCA Incoterms® 2020), if nothing to the contrary emerges under the Agreement or individual subsequent alterations of the Agreement and individual stipulations (§ 1 para. 3).
- (2) Delivery dates or delivery periods that can be agreed with or without commitment shall be stated by WRITTEN declaration. Unless expressly agreed otherwise, the dates or periods stated by the Seller are non-binding.
- (3) Periods for delivery commence no earlier than upon the conclusion of the Agreement. If a down payment, a contractual letter of credit, or a payment guarantee has been agreed, the delivery period shall commence upon receipt of the agreed down payment, the contractual letters of credit, or a payment guarantee; additionally, if technical issues at contract conclusion were subject to later negotiations, a written clarification of these issues must have been issued.
If subsequent alterations of the Agreement are mutually agreed, the altered delivery dates or periods shall be adequately extended; if necessary, delivery dates or delivery periods shall be agreed anew at the same time.
- (4) The Seller may withhold delivery until due payments have been made (and, as the case may be, until a Letter of Credit in accordance with the Agreement has been opened) by the Buyer in accordance with the AGREEMENT and all other obligations owed by the Buyer under the AGREEMENT that are necessary for the performance of the delivery of the purchase object.
- (5) The Buyer may demand that the Seller deliver six (6) weeks from having exceeded a non-binding delivery date or a non-binding delivery period. Upon receipt of the demand, the Seller shall be in default. Section 376 German Commercial Code (HGB) is excluded.
- (6) In the case of delay in delivery the Buyer may claim, after six (6) further weeks have elapsed and if the delay has been culpably caused by the Seller, fixed compensation for loss and damage amounting equal to zero point five per cent (0.5 %) for each further full week of delay up to a total of five per cent (5 %) on the value of that part of delivery which, as a consequence of the delay, cannot be used as intended. Any claim for damages shall also be capped at this maximum amount if the Buyer declares the avoidance of the Agreement due to the delay. The Buyer must plausibly document that financial damage was suffered due to the delay.
- (7) If the maximum liquidated damages according to para. 6 herein-above are reached, the Buyer - after he has fixed an additional reasonable period combined with the announcement that acceptance of delivery will be refused, at least however six (6) weeks, - may, if the Seller does not complete delivery before that date, notify the Seller in writing of the termination of the Agreement in respect of that part of the goods which are delayed, save where acceptance of partial performance should be an unreasonable demand. Any further claims against the Seller because of delayed delivery are excluded.
- (8) In the event that, whilst being in default with delivery, the Seller becomes unable to perform delivery, the Seller shall be liable within the afore said agreed limits of liability. The Seller shall not be liable if the damage would have occurred even if delivery had been performed at the due date.
- (9) If a binding delivery date or a binding delivery period is exceeded, the Seller shall already be in default from the date of exceeding the delivery date or the delivery period. In that event, the Buyer's rights shall be subject to para. 6, 7 and 8 herein-above.

- (10) Force majeure or business disruptions occurring in the Seller's business, or in the business of the Seller's supplier, that temporarily prevent the Seller through no fault of his own from delivering the purchase object at the agreed date or within the agreed period of time, shall alter the dates and period mentioned in para. 2 bis 9 herein-above by the period of time during which performance is not possible due to such disruptions of performance. Force majeure shall be assumed if performance is prevented by circumstances beyond the party's control or especially by one of the following circumstances: fire, natural disasters, war, seizure, requisition, prohibition of export, embargo (compare § 2 para. 3) or other authority measures, general shortage of materials, restrictions in the use of power, industrial disputes or if a breach of contract of subcontractors is caused by any such circumstances. The circumstances beyond the party's control and their discontinuation are to be reported to the other party immediately. Should such events lead to postponement of performance by more than four (4) months, any party, irrespective of other rights of withdrawal, may revoke from Agreement by written declaration. Other rights of Revocation shall not be affected.
- (11) We reserve the right to changes in construction, form, weight, or changes in the scope of delivery during the delivery period, if those changes or deviations are reasonable to the Buyer under consideration of our interests. In particular, but without limitation, changes to purchased parts (in particular, but not limited to, motors, flaps, ball valves, valves, pumps, trays, plates and control cabinets) will come into consideration, which may vary according to the choice of the subcontractor (e.g., but not limited to, color, shape, presentation, design, size, weight, deviations in surface quality). Typical construction changes are, for example, but not limited to, modified pipeline flow directions or optimizations of components. Acceptability regulations in the customer countries can also lead to reasonable construction changes. Where the Seller uses symbols or numbers to identify the order or the ordered purchase object, no rights can be derived from this alone.
- (12) Fulfillment of the Seller's delivery obligations is subject to the precondition that the Buyer punctually and properly performs his obligations., where agreed in particular (but not limited to) the timely opening of a Letter of Credit in accordance with the Agreement. The plea of non-performance of the Agreement is reserved.
- (13) Partial deliveries and partial performance are permissible.

§ 6 Conditions of Acceptance, Default on Acceptance

- (1) The Buyer has to collect the purchase object within ten (10) days following the notice of readiness for shipment at the latest. The costs incurred by the delay for storage, insurance, protection measures etc. will be charged to the Buyer. In this case the Seller shall be - without prejudice to further claims of the Seller - entitled in particular to charge stand-by fees in the amount of EUR 200 (two hundred) per day per machine respectively shipment. This amount can be raised or reduced if the Seller presents proof that the damage / loss suffered was higher or lower. The Seller shall set the Buyer a reasonable period for acceptance by written declaration if the Buyer does not accept the goods upon delivery. The Seller's right to require payment of the purchase price shall remain unaffected.
- (2) After expiration of the additional period the Seller is entitled to terminate the Agreement in whole or partly by written declaration and claim damages. These damages amount at least half of the net value of the goods for delivery, or the delivery part not taken possession of; other rights of the Seller shall not be affected.
- (3) The risk of accidental loss and/or accidental deterioration of the purchase object shall pass to the Buyer according to Art. 67 et seq. CISG, but no later than on the date on which the Buyer defaults on acceptance.
- (4) In the event that the Seller does not exercise the rights under para. 1 und 2 herein-above, he may freely dispose of the purchase object and, without prejudice to other statutory and/or contractual rights, such as damages claims, deliver in lieu of the purchase object goods of the same type in compliance with the Agreement terms, within a reasonable period of time.

§ 7 Reservation of Title

- (1) Title in the purchased objects shall not pass to the Buyer until the Seller is in receipt of the full Agreement price. Until receipt of the full Agreement price by the Seller, the Buyer shall
- keep the purchased objects properly stored and protected, complete and in good repair as well as operate them properly as long as they have already been placed into service.
 - insure the purchased objects with a reputable insurer for their full replacement value against all risks and prove this upon request of the Seller.
 - not sell, pledge, transfer ownership as a security, lease or otherwise dispose of the purchased objects without Seller's prior written consent.
- (2) If the applicable property laws do not acknowledge a reservation of title as provided for above or request additional preconditions such as but not limited to registration requirements etc., the Buyer undertakes to support the Seller at Seller's request to the best of his ability in order to fulfill these requirements or to establish a comparable security interest for Seller in relation to the purchased object. Reasonable costs thereby incurred shall be for Buyer's account. The Buyer shall inform the Seller if any dangers regarding the property of the Seller should occur. This applies especially to disposals of third parties or authority measures.
- (3) The transfer of risk as stipulated in this Sales Terms remains unaffected by the reservation of title.

§ 8 Seller's Responsibility for Conformity of the Goods

- (1) The Buyer may raise claims based on non-conformity of the purchase object only if he duly fulfilled his obligation to examine the purchase object and give notice of any non-conformity. The Buyer has to examine the purchase object in every respect for any lack of conformity with the contract immediately after the goods are physically transferred to him and to give notice of any non-conformity immediately after the non-conformity had been discovered. The notice has to be made that substantiated, that the Seller is able to make a clear-cut judgement on the nature, contents and scale of the non-conformity as well as to acknowledge the Buyer's intention not to accept the delivery of the purchase object as proper fulfillment of his duties.

The Buyer shall lose the right to claim non-conformity with the contract, if he does not give notice to the Seller by written declaration by the quickest possible means by which transmission is guaranteed (e.g. by telefax) immediately after he discovered or ought to have been discovered the non-conformity. Art. 44 CISG is excluded. After arrangement with the Seller the Buyer is responsible for the securing of all proofs.

- (2) The proof of careful treatment, adequate storage and maintenance of the purchase object devolves on the Buyer.
- (3) If the delivery was not fulfilled as contractually agreed, the Seller shall according to his choice be free to remedy such non-conformity by subsequent improvement or making a replacement, even in the case of fundamental non-conformity within twelve (12) weeks after the Buyer's request. The Seller is seeking a quick subsequent improvement respectively replacement but cannot accept shorter deadlines because of the spare part production where necessary, the delivery and the formalities for export and import. Replaced parts shall become the property of the Seller. The Buyer shall be obliged to collaborate to a reasonable extent in the re-working following the instructions of the Seller and under reimbursement of costs.
- (4) The Seller expressly confirms that (with the exception of parts subject to wear and tear) it will replace, free of charge (DAP Incoterms 2020), parts which are objected to in writing on the grounds of non-conformity within the period specified in § 17 upon return of the original parts. For the avoidance of doubt, any customs duties, handling or clearing charges incurred in the country of destination shall be for the Buyer's account. For the parts installed to remedy the non-conformity, the Buyer may only assert claims based on the non-conformity of parts until the expiry of the limitation period of the object of purchase.
- (5) No claims are created on the grounds of non-conformity if there is a relationship of cause and effect between the emerging non-conformity and the fact that
- the purchased item was handled improperly or excessively strained, but not limited to these cases, in the case of improper use of operating/production resources.
 - the purchase object was previously repaired or serviced by a service provider not accredited by the Seller and the Buyer should have recognized this, or
 - parts were installed in the purchase object the use of which is not permitted by the Seller, or the purchase object was altered in a manner not permitted by the Seller, or
 - the Buyer failed to observe the provisions relating to the handling, maintenance, servicing of the purchase object (e.g. operating instructions).
- (6) If the Seller does not remedy the non-conformity (including defects of title) in accordance with the preceding paragraphs, the Buyer is entitled to a reasonable pro rata reduction of the purchase price. If the lack of conformity is fundamental as defined by article 25 CISG, the Buyer may demand termination of the Agreement after fruitless elapse of the deadline according to para. 3 herein-above, except where the Seller delivers prior to termination.
- (7) Natural wear-and-tear shall not create any claims based on non-conformity, whatsoever.
- (8) Item 12 will apply to claims to damage compensation or reimbursement of expenses made in vain due to a lack of conformity in the purchased item.

§ 9 Adherence to Statutory Provisions under Law Governing Export Controls

The obligation on the part of the Seller and the party receiving the goods to fulfil the AGREEMENT shall be subject to the proviso that the execution of the AGREEMENT is not prohibited or negatively affected by applicable export-control provisions of the Federal Republic of Germany or the European Union.

In addition, this obligation is subject to the proviso that the execution of the Agreement is not prohibited or negatively affected by other applicable provisions under export-control law, in particular the law of the USA, as far as it is applicable from the U.S. point of view and German/European law does not conflict with its application.

Should trade policy or other factual or legal developments emerge, that the Agreement or certain performances owed under the Agreement are or will become subject to government approval or fall or will fall under a prohibition ban, the parties shall be obligated to consult over alternative Agreement designs with the aim of adopting an amendment to the Agreement by mutual agreement.

§ 10 Exclusion of Liability for Damage Incurred in Connection with Export-Control Law

The Agreement shall be deemed to be null and void if it relates to a legal transaction that is prohibited under the law of the Federal Republic of Germany resp. the European Union or the law of the USA, as far as it is applicable from the U.S. point of view and German/European law does not conflict with its application, and shall be provisionally invalid to the extent that it relates to a legal transaction that requires an (export) license.

Notwithstanding provisions to the contrary in the Agreement, the Seller shall not be liable for damage, losses or any other costs that emanate from adherence to export-control provisions of the Federal Republic of Germany resp. the European Union or the law of the USA, as far as it is applicable from the U.S. point of view and German/European law does not conflict with its application, including, but not restricted to those which

- a) emanate for this legal transaction from a negligent or unrecognized contractual prohibition or an approval of the Agreement that is not received under the said export-control provisions as long as failure to obtain approval is not due to the willful intent or gross negligence of a party,
- b) lead to the execution of the Agreement being prohibited or negatively affected by the said export-control provisions,
- c) emanates from delays as a result of government license obligations and/or comparable procedures that have not been caused by a party acting with willful intent or in a grossly negligent manner.

§ 11 Materials, accessories, etc. provided and purchased at the request of the Buyer

- (1) **Provisions:** The Buyer is obligated to provide the Seller with materials, accessories or other items or services of any kind (hereinafter referred to as 'Provisions') free of charge and in good time in accordance with the corresponding requirements of the Seller at its place of business. The scope of these provisions is the subject of an individual agreement (e.g., annex: provision obligations). If, by way of derogation, the Buyer urges the Seller to procure these provisions itself, the Buyer shall be deemed responsible for the selection of these provisions and their suppliers and shall reimburse their verified procurement costs in full (e.g., including transport and packaging costs, import duties, etc.), unless the Buyer can prove these to be unreasonable. If the Buyer leaves the selection of the provisions or suppliers to the Seller, the Buyer shall also be responsible for their selection, unless it can prove a breach of duty by the Seller. As an alternative to assuming the verified procurement costs, the parties may agree on a contribution that is available for the procurement. In this case, too, the Buyer shall be deemed responsible for the selection, unless it can prove its breach of duty. Payments on these procurements are made monthly at the end of the month upon presentation of corresponding invoices.
- (2) **Purchases by instruction:** If the Buyer instructs the Seller to purchase certain materials, accessories or other items or services of any kind without being obligated to provide them in accordance with paragraph 1 (hereinafter referred to as 'Purchases'), the Buyer shall also be deemed to be responsible for the selection of these purchases and the selection of its suppliers, unless it can prove a breach of duty by the Seller. In the event that higher costs are associated with the purchases than would have been incurred by the Seller's own production or selection, the Seller shall be entitled to be reimbursed by the Buyer for proven additional costs. The Seller is entitled to refuse such instructions if they would be associated with disproportionate costs or if he expresses serious, justified doubts about the suitability of the ordered purchases.
- (3) **Required information:** In the cases of Paragraph 1 (1) the Buyer is obligated to attach a delivery note to the provisions containing all information necessary for the treatment, in particular (but not limited to) the type of material used (brand, standard designation, analysis) and its parts, unit weight and total net weight, treatment instructions, references to special circumstances, previous experience with the material, etc. A corresponding obligation also applies to the Buyer in the cases of Paragraph 1(2) and 2 if he has been requested by the Seller to provide corresponding information. If this delivery note is not provided or only partly provided, contrary to the aforementioned Paragraph 3 sentence 1 or 2, the Seller shall be entitled to carry out the order at its own dutiful discretion.
- The Seller shall not be liable for errors resulting from the missing, incomplete, or inadequate information provided by the Buyer, as long as the Seller has not caused the damage intentionally or through gross negligence.
- If the Buyer fails to comply with its obligations under this paragraph 3, the Seller shall be entitled to reimbursement of any additional costs, expenses, or damages arising directly or indirectly from such non-performance.
- (4) **No incoming goods inspections:** In the cases referred to in paragraphs 1 and 2, the Seller is processing third-party material and can therefore not know its composition, construction, and processing or vouch for its suitability. The Seller is not obligated to check provisions or purchases for their quality, completeness, freedom from defects, or other errors. If the Seller nevertheless carries out an incoming goods inspection, this does not release the Buyer from its liability. To the extent that the Seller has not (co-)caused any damage itself intentionally or through gross negligence, the Buyer may not raise the objection that the Seller could or should have detected quality or other defects when carrying out an incoming goods inspection.
- (5) **Liability and compensation:** The Buyer is liable for completeness, freedom from defects, quality, processability, dimensional accuracy, functionality, surface finish, packaging, etc. of the provisions or purchases. If the provisions or purchases do not meet these requirements or if they are not or only insufficiently suitable for the performance of the services owed, the Seller shall be entitled to reject the provisions or purchases and to request other provisions or purchases. The Seller will not accept any liability in such cases. Instead, the Buyer shall bear all costs, expenses and damages resulting from this scenario, even if they are incurred indirectly, (including those that can be proven by the Seller or third parties); in particular, this also applies to case resulting from the associated time delay, insofar as the Seller has not itself caused the costs, expenses, or damages itself intentionally or through gross negligence. Thus, in the event of a necessary repeated fulfilment of its contractual obligations by the Seller, the Buyer must also bear the associated costs, risks, and delays and reimburse the Seller.
- In addition, the Seller assumes no liability for loss, theft, damage, or destruction of provisions, unless the Seller itself has caused the damage intentionally or through gross negligence.
- (6) **Extension of the completion deadline:** It shall be deemed reasonable to extend the completion period by the duration corresponding to the time caused by the Buyer's failure to perform its obligations under this paragraph, plus the additional time necessary to prepare for the continuation of the work.
- (7) **Right of withdrawal and compensation:** The Seller assumes no liability for the conduct of provisions and purchases during the fulfilment of its contractual obligations by the Seller. If, during the fulfilment of its contractual obligations by the Seller, errors occur in the provisions or purchases, or if they become defective, the Seller shall be entitled to withdraw from the contract and to invoice the service rendered up to that point or, if technically possible, to remedy the errors at the expense and risk of the customer and to continue with the performance. The Seller must inform the Buyer of this immediately.
- If the errors or damage to the provisions or purchases in turn result in additional costs or expenses or cause damage to the machine to be manufactured or to other property of the Seller or third parties, the Buyer must also reimburse the Seller for the resulting costs, expenses, or damages, unless the Seller itself has caused them intentionally or through gross negligence.

§ 12 Liability

- (1) Without prejudice to further restrictions laid down elsewhere, claims by the Buyer for damages and reimbursement of futile expenses due to a lack of conformity of the purchased item presuppose that the lack of conformity is the fault of the Seller.

- (2) There are no other express or implied warranties. Any statement about the production and/or commercial efficiency of a machine shall only be regarded as an estimate and not as a warranty or binding statement. No liability is accepted for materials or accessories purchased at the instigation of the Buyer.

No liability is accepted for parts supplied which are subject to premature wear on account of the nature of the materials of which they are made, particularly moving parts, or the type of use.

The Seller has no liability for defects which arise from the design prescribed by the Buyer, in particular no liability attaches to the Seller for defects resulting from the following causes: poor maintenance, use of non-original Thies spare parts, changes without the written consent of the Seller, Poor maintenance, use of non-original Thies spare parts, modification without the written consent of the Seller, poorly executed repairs by the Buyer, or normal wear and tear.

- (3) If the Seller is not tenable for the impossibility of performance, all claims of the Buyer shall be deemed extinguished.
- (4) If the Seller is liable to pay compensation for damage that was caused by negligence (but not by gross negligence), the Seller's liability shall be limited as follows: The Seller shall be liable only for breached obligations that are essential to the Agreement, for example obligations that the Agreement, according to its content and purpose, is particularly designed to impose, or without the performance of which the implementation of the purchase Agreement is not possible and on the observance of which the Buyer regularly relies and may rely. This liability is limited to the typical damage that is foreseeable at the time of entering into the Agreement; the typical damage shall only comprise damage to the purchase object itself, not however any consequential damage and/or lost profits. If the damage is covered by an insurance policy that the Buyer took out to cover the case in question (with the exception of fixed-sum insurance), the Seller shall be liable for any detriment suffered by the Buyer in connection therewith, e.g. insurance premiums or interest charged, only until such time as the insurance has finalized claim settlement.
- (5) In case of any violation of side obligations (also of pre- or post-contractual side obligations), the Seller only grants liability for damage which is caused by gross negligence and limited to a maximum of ten per cent (10 %) of the total final purchase price.
- (6) Regardless of whether the Seller is at fault, the Seller's liability in the case of fraudulent concealment of a defect, fraudulent misrepresentation, under a guarantee issued, or a risk assumed, and under the German Product Liability Act (Produkthaftungsgesetz - ProdHaftG), shall not be affected.
- (7) The personal liability of statutory representatives, persons employed in performing an obligation for whom the principal is vicariously liable and employees of the Seller for any damage caused through their respective slight negligence is excluded. In the case of damage caused through the gross negligence of above-said persons, with the exception of statutory representatives and executive/managerial employees, the limitation of liability applicable to the Seller shall apply mutatis mutandis.
- (8) The contractual liability for persons employed in performing an obligation for whom the principal is vicariously liable is with the exception of intent and gross negligence excluded in accordance with section 278 sentence 2 in conjunction with section 276 par. 3 German Civil Code.
- (9) The limitations of liability provided for in the present Section shall not apply in the case of injuries to life, the body or health.

§ 13 Delays Resulting from Official Government Measures

Any applications for (export) licenses required should be filed three months prior to the planned delivery. In the event that there are delays as a result of official government approval obligations and/or comparable procedures, the point in time of the performance shall be postponed commensurately in accordance with respective contractual obligations.

§ 14 Contractual Use and Further Supply of Contractual Goods by the Party Receiving Delivery

The Buyer may use the purchase object only for the purpose that it has provided notification of. In particular, the Buyer shall not be allowed to supply the purchase object to a third party if such third party is on a sanctions list integrated into the AGREEMENT via § 10.

§ 15 Export license, information obligations

- (1) The Seller is not aware of any circumstances that would prevent the issuance of an export license if required. However, the Seller does explicitly neither guarantee that a required export permit will be granted nor the possibility of issuing an required export permit.
- (2) The Buyer agrees to use its best efforts to support the Seller when obtaining an export permit. The Buyer shall be responsible for obtaining an import license if so required.
- (3) Notwithstanding other information obligations stipulated in this Agreement, each party shall support the other party in providing that information and documents (referred to in the following as: Information) which are required in order to meet the export control law integrated into the Agreement via § 9 or which are demanded by relevant government authorities in this regard.
- This obligation may in particular also include Information on the end customer, the objective and the use of the purchase object in accordance with their intended purpose and shall not be excluded through non-disclosure obligations that may have been concluded previously. If necessary, an exemption from a previously closed non-disclosure agreement can be demanded if an applicable provision under export-control law require technical details to be transmitted to the involved authorities.

§ 16 Expect Controls and Revocation of the Agreement

- (1) Each party may revoke the Agreement with ab initio effect if the government authority in charge
- refuses to issue the (export) license or
 - fails to issue the required (export/import) license within a period of three (3) months after the delivery date.

- (2) The Seller may withdraw from the contract if the Buyer takes actions that are expected to breach relevant export control regulations included in the contract in accordance with § 9, in particular if there are reasonable indications that he does not want to use the goods for the purpose communicated by him (§ 14) but for an illegal purposes.
- (3) The provisions cited in the foregoing are not based on the possibility to terminate the Agreement for reasons other than the ones stated in the foregoing.

§ 17 Time Barring (Statute of Limitation Period)

- (1) By way of deviation from section 438 para. 1 no. 3 of the German Civil Code the general time-bar period for claims emanating from delivery of non-conforming goods resp. goods subject to rights or claims of a third party shall be one year after transfer of risk.
- (2) Special statutory provisions for rights in rem to hand over objects held by third parties shall also remain unaffected (section 438 para. 1 no. 1 of the German Civil Code), for things that have been customary used for a building and have resulted in the defectiveness of the building (section 438 para. 1 no. 2 of the German Civil Code) as well as fraudulent intent or grossly negligent ignorance on the part of the Seller (Art. 3 of the act enacting the CISG in conjunction with section 438 para. 3 of the German Civil Code).
- (3) The aforestated time-bar periods under purchase law shall also apply to contractual and non-contractual claims to damages on the part of the Buyer that are based on delivery of non-conforming goods resp. goods subject to rights or claims of a third party unless application of regular statutory time-bar periods (section 195, section 199 of the German Civil Code) would lead to a shorter time-bar period in individual cases. This shall at any rate not affect the time-bar periods laid down in the German Product Liability Act (Produkthaftungsgesetz - ProdHaftG). Otherwise solely statutory time-bar periods shall apply to damage claims by the Buyer.

§ 18 Place of Fulfilment, Applicable Law, Arbitration Clause

- (1) The place of performance for the delivery of the purchase object in the general case of delivery FCA (Free Carrier) from the delivery plant in Coesfeld (FCA Incoterms® 2020) is the delivery plant in Coesfeld.

By way of derogation, a different Incoterm 2020 may also be agreed by individual agreement (cf. § 3 (3)):

If, deviating from sentence 1, the Incoterms 2020 clauses CPT, CIP, CFR, CIF, DAP, are agreed or if, deviating from sentence 1 and § 3 (3), the clause DDP is agreed, the SELLER shall indicate the transport costs included in the price separately in the deviating agreement. The place of performance shall be the place of handing over the goods to the first carrier in case of agreement of clause CPT or CIP, on board the vessel in the port of shipment in case of clause CFR or CIF, and the place of destination in case of clause DDP or DAP.

If, in case of agreement of clauses CPT, CIP, CFR, CIF, DAP or DDP, the transport costs actually incurred, as evidenced by the relevant invoice documents, differ from the aforementioned calculated transport costs, the BUYER shall bear the difference, both in the event that the transport costs actually incurred (or transport costs to the place of delivery actually incurred) are higher than the calculated transport costs and in the event that they are lower than the calculated transport costs.

The place of performance for payments rendered by the Buyer and for all other reciprocal claims is the business offices (administrative headquarters) of the Seller.

- (2) The Agreement, including any and all disputes arising from or related to the AGREEMENT and all legal relationships between the Seller and the Buyer are governed by the substantive laws of Germany. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall apply, if no deviating regulations are determined, Art. 6 CISG.
- (3) (For) all disputes, differences of opinion and/or claims directly or indirectly emanating from or in connection with this Agreement including its validity, invalidity, its being null and void, practicability and impracticability, violation or dissolution,
- a) with Buyers having their head business offices (administrative headquarters) in the EU, Switzerland, Norway or Iceland, the exclusive place of jurisdiction shall be the courts having jurisdiction over the Seller. The Seller shall be entitled, however, to take legal action at the general place of jurisdiction of the Buyer.
- b) with Buyers which do not have any head offices (administrative headquarters) in the EU, Switzerland, Norway or Iceland, shall be finally settled according to the Arbitration Rules and the Supplementary Rules for Expedited Proceedings of the German Institution of Arbitration e.V. (DIS) in force on the date when the Notice of Arbitration is submitted in accordance with these Rules without recourse to the ordinary courts of law. The court of arbitration shall be composed of three arbitrators. The place of arbitration is Münster/Westf., Germany. The language of the arbitral proceedings is German. The choice of law in para. (2) shall also apply with respect to this arbitration agreement.

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