



## General Terms and Conditions of Delivery and Assembly

### SHW Werkzeugmaschinen GmbH

(June 2023)

#### 1. General - Scope

1.1 These General Terms and Conditions of Delivery and Assembly shall apply to all mutual claims arising from and in connection with the delivery and, if agreed, the assembly of machine tools by SHW Werkzeugmaschinen GmbH, Alte Schmiede 1, 73433 Aalen, Germany, (hereinafter "SHW") to and for the Buyer.

1.2 Terms and conditions of the Buyer that are contrary to, supplementary to or deviate from these General Terms and Conditions of Delivery and Assembly shall only become part of the agreement if SHW has expressly agreed to them in writing. Performance in the knowledge of existing general terms and conditions of the Buyer shall not constitute consent by SHW to incorporate such into the agreement.

1.3 In the event of an ongoing business relationship between SHW and the Buyer, these General Terms and Conditions of Delivery and Assembly shall also apply to all future transactions with the Buyer, irrespective of whether separate reference is made thereto after their incorporation into the first agreement.

#### 2. Subject Matter and Conclusion of the Agreement

2.1 Subject to these General Terms and Conditions of Delivery and Assembly, the Parties enter into an agreement for the delivery of products from SHW's tools and machinery portfolio, including spare parts (hereinafter "Products"). If the assembly of the Products is contractually agreed upon, the Products (with the exception of spare parts) shall be assembled by SHW subject to these General Terms and Conditions of Delivery and Assembly. If spare parts are assembled by SHW outside the warranty, SHW's General Terms and Conditions of Service shall apply.

2.2 All offers provided by SHW to the Buyer are subject to change without notice and are non-binding, unless they are expressly marked as binding or contain a specific acceptance period. SHW may accept orders from the Buyer within fourteen (14) days of receipt.

2.3 If SHW has set a time limit for acceptance upon submission of a written offer, the agreement shall be deemed concluded if the Buyer has sent a written declaration of acceptance before the expiry of such time limit and if the declaration of acceptance is received by SHW at the latest within one week after the expiry of the time limit.

#### 3. Intellectual Property

Plans and technical documents (i.e. all information describing a technical product or software and instructing on its manufacture, use, maintenance or repair, hereinafter collectively "Documents") provided to the Buyer before or after conclusion of the

agreement shall remain the exclusive property of SHW, unless an express contractual provision stipulates for a transfer of ownership.

#### 4. Software Usage

4.1 Insofar as the Product contains software, the Buyer shall be granted a non-exclusive right to use the delivered software including its documentation. The software is solely provided for use on the intended Product. The use of the software on more than one system is prohibited.

4.2 The Buyer may only copy, revise, translate or convert the software from the object code into the source code to the extent permitted by law. The Buyer shall not remove the manufacturer's information - in particular copyright notices - and shall not modify them without SHW's prior express consent.

4.3 All other rights to the software and the documentation, including copies, shall remain with SHW or the software supplier. The Buyer is not permitted to grant sublicenses.

#### 5. Confidentiality

The parties shall treat all information, in particular Documents, the software and its documentation, received from the other party during the conclusion and performance of the agreement or of which they have become aware, as confidential.

#### 6. Prices and Terms of Payment

6.1 The prices apply to the scope of delivery and services as specified in the order confirmation. Services, agreed subsequently or additionally, shall be invoiced separately. Price lists and prices stated in catalogues constitute prices excluding packaging, unless such packaging is necessary to avoid damage to the Product during transport to the agreed place of delivery under normal transport conditions.

6.2 The agreed prices are stated as net prices, excluding VAT.

6.3 Unless otherwise agreed upon, all payments shall be due immediately, upon receipt of the invoice, and shall be made without any deductions. In case of non-payment by the due date, the Buyer shall be in delay of payment without SHW being required to issue a separate warning. SHW reserves the right to claim interest in the amount of nine (9) percentage points above the respective applicable base interest rate as of the due date.

6.4 The Buyer shall only be entitled to offset if the Buyer's counterclaims have been legally established, are undisputed or have been accepted by SHW. Furthermore, the Buyer shall only be entitled to retain payments to the extent that the Buyer's counterclaim is based on the same agreement.

#### 7. Dates, Deadlines and Delay in Delivery

7.1 Dates and deadlines are only estimations and do not constitute a contractual obligation. SHW shall, however, make commercially reasonable efforts to comply with dates and deadlines. Dates and deadlines shall only be binding if expressly agreed in writing in the agreement.

7.2 SHW shall be entitled to make partial deliveries to a reasonable extent.

7.3 The delivery period shall be deemed to have been met if the Product has left SHW's facility or notification of ready-for-shipment has been made by the expiry of the delivery period. Insofar as an acceptance is required, except in the case of justified refusal of acceptance, the date of acceptance shall be decisive, alternatively the notification of readiness for acceptance.

7.4 If delivery periods are binding and the Buyer is obliged to assist SHW, SHW shall only be bound by the delivery period if the Buyer has fulfilled his assistance obligations in due time. If the Buyer does not fulfil his obligation to assist in due time, the delivery period shall be extended by the duration of the Buyer's delay.

7.5 If SHW is unable to meet binding delivery deadlines for reasons which it is not responsible for (non-availability), SHW shall inform the Buyer without delay and shall at the same time notify the Buyer of the anticipated new delivery deadline. If the Product or parts thereof are also not or not sufficiently available within the new delivery period, SHW shall be entitled to withdraw from the agreement in whole or in part; SHW shall immediately reimburse any payment already made by the Buyer. Non-availability of the performance shall be deemed to occur in particular, but not limited to, in the event of non-timely or incomplete supply of SHW by its suppliers, in the event of other disruptions in the supply chain, e.g. due to Force Majeure, or if SHW is not obliged to supply in the individual case.

7.6 Statutory regulations apply to deliveries that have been expressly agreed for a fixed date (*absolutes Fixgeschäft*). In case the parties have agreed on a relative fixed-date (*relatives Fixgeschäft*), the Buyer, however, shall be required to issue a warning before claims for damages or rights of withdrawal can be exercised.

#### 8. Assembly

8.1 If SHW is contractually obliged to assemble the Product, the Buyer shall assist SHW to a reasonable extent and at its own expense. In addition to the assistance obligations expressly defined in the agreement, the following obligations to assist shall, in particular, but not limited to, apply:

8.1.1 Ensuring adequate working conditions, e.g. providing adequate working and common rooms, including adequate sanitary facilities

as well as protective clothing and protective devices that are required at the assembly site. In addition, the Buyer shall take all measures for the benefit of SHW employees that it would take to protect its own employees;

8.1.2 Provision of the necessary work equipment and resources, such as water, energy as well as utility items, construction materials and tools, which are required for the assembly and the commission of the Product. This also includes the provision of adequate storage space for machine parts, equipment, materials and tools provided by SHW for the assembly and the commission of the Product;

8.1.3 Provision of the necessary technical documentation for the assembly site, e.g. documentation on electricity, gas and water lines and/or similar installations, as well as the necessary structural and static documents;

8.1.4 Presence of the Buyer or a representative appointed by the Buyer at the assembly site.

8.2 SHW shall be entitled to engage subcontractors for the assembly.

## 9. Force Majeure

9.1 Force Majeure is an external, unforeseeable event that cannot be avoided (in good time) by exerting reasonable care and using technically and economically reasonable means. This includes in particular, but is not limited to, natural disasters, pandemics, terrorist attacks, direct and indirect consequences of warlike events, regardless of whether these were known at the time of conclusion of the agreement or not, power failure, power and nitrogen shortages, failure of telecommunications connections, interruption of data or telecommunications networks, cyber-attacks, strike or legal determination or action by government or courts or authorities (regardless of their legality), decisions and sanctions of national or international authorities, malfunctions or accidents at a plant resulting in interruptions of production, reduction of power or heat supply, floods or impassable roads.

9.2 To the extent that SHW is prevented from fulfilling its obligations as a result of Force Majeure, SHW shall be released from these obligations for the duration of such Force Majeure event. If it is foreseeable that the event of Force Majeure and/or its effects will exceed a period of six (6) months, the parties shall engage in amicable efforts to find a mutual acceptable solution. If the parties fail to do so, either party shall have the right to withdraw from the agreement with immediate effect.

## 10. Transfer of Risk and Acceptance

10.1 Delivery shall be made at the risk and expense of the Buyer. The risk of accidental loss and accidental deterioration shall pass to the Buyer upon the occurrence of the following event, even in the case of freight paid delivery, and even if partial deliveries are made:

10.1.1 for deliveries of Products that are not installed or assembled by SHW, when the

Product is entrusted to the transport company. SHW shall determine the appropriate mode of transport and the transport company at its reasonable discretion;

10.1.2 for deliveries of Products that are installed or assembled by SHW, upon completion of the installation or assembly. If the agreement requires the Buyer to accept the installation or assembly, at the time of acceptance in accordance with Section 10.2.

10.2 If the parties agree to conduct an acceptance procedure, the contractual provisions agreed thereto shall apply. Section 640 para. 2 sentence 1 BGB shall apply correspondingly to the contractually agreed acceptance. If required, SHW shall separately inform the Buyer of the significance of its conduct at the beginning of the period stipulated in section 640 para. 2 sentence 1 BGB.

10.3 The Buyer may not refuse to accept due to insignificant defects or defects for which the Buyer is liable.

## 11. Warranty

11.1 The statutory provisions shall apply to the Buyer's rights in the event of material and legal defects (including incorrect and incomplete delivery as well as improper assembly or deficient instructions), unless otherwise provided below.

11.2 If the parties have not agreed to conduct an acceptance procedure, the Buyer shall be obliged to thoroughly inspect the Product without undue delay after delivery, insofar as this is reasonable in the ordinary course of business, and shall notify SHW of any defects in writing without undue delay. If a defect becomes apparent later, the Buyer shall notify SHW thereof without undue delay after its discovery. If the Buyer fails to comply with the above obligations, the Product shall be deemed to have been accepted in view of the respective defect.

11.3 If the Product is defective, SHW shall be entitled to remedy the defect by either repair or delivery of a new Product, at SHW's sole discretion. SHW shall, however, be entitled to refuse the requested type of remedy if such would only be possible at disproportionate costs. In the event of repair, SHW shall bear all expenses necessary for the repair, in particular transport, travel, labour and material costs, insofar as such costs are not raised as a result of the Product having been transported to a place other than the place of performance.

11.4 If SHW fails to remedy the defect twice, the Buyer is entitled, at the Buyer's sole discretion, to withdraw from the agreement or to demand a reduction.

11.5 The Buyer's warranty rights are excluded,

11.5.1 if the defect is caused by the material supplied by the Buyer and SHW is not liable for the defect;

11.5.2 if the Buyer modifies or orders a third party to modify the Product without SHW's consent and if this renders the remedy of the defect impossible or unreasonably difficult. In any case the Buyer shall bear the additional costs of remedying the defect caused by the modification.

11.6 The Buyer's warranty rights shall become time-barred one year after delivery; if the parties have agreed on an acceptance procedure, this period of limitation shall commence with the acceptance pursuant to Section 10.2. The period of limitation pursuant to this Section shall not apply if SHW has fraudulently concealed the defect as well as in cases of Section 12.

11.7 Unless an express guarantee has been agreed between the parties under the agreement, no guarantee shall subsist.

## 12. Limitation of Liability

12.1 SHW shall be fully liable for damages in the event of intent or gross negligence, for damages resulting from injury to life, body and health, in accordance with the provisions of the Product Liability Act, to the extent that it has fraudulently concealed a defect and in case of a guarantee

12.2 In the event of a slight negligent (*einfache Fahrlässigkeit*) breach of an essential contractual obligation, i.e. an obligation the fulfilment of which is essential for the proper performance of the agreement and the observance of which the Buyer may regularly rely on (*Kardinalspflicht*), SHW's liability shall be limited to the foreseeable, typically occurring damages.

12.3 Liability shall be excluded otherwise.

12.4 The limitation of liability set forth herein shall also apply to damages resulting from a breach of duty by SHW's vicarious agents, legal representatives or suppliers.

## 13. Retention of Title

13.1 SHW shall retain title to the Product until complete payment of the purchase price has been made. In the event the Buyer is in breach of the agreement, in particular if the Buyer is in default of payment, SHW shall be entitled to retake the Product after having set a reasonable period of time. Retaking the Product does not constitute a withdrawal from the agreement.

13.2 The Buyer shall handle the Product with care; the Buyer is particularly obliged to sufficiently insure the Product at its own expense against damage by fire, water and theft at its nominal value. The Buyer is further obliged to maintain the Product on a regular basis, if necessary.

13.3 The Buyer shall notify SHW in writing without undue delay in case of seizure or other interventions by third parties, in order for legal action to be taken in accordance with section 771 of the Code of Civil Procedure. If the third party is unable to reimburse SHW for the judicial and extrajudicial costs of an action pursuant to section 771 of the Code of Civil

Procedure, the Buyer shall be liable for the loss incurred by SHW.

13.4 The Buyer shall be entitled to resell the Product in the ordinary course of business; however, the Buyer assigns to SHW all claims in the amount of the final invoice of the claim accruing the Buyer from the resale against its customers or third parties, irrespective of whether the Product has been resold without or after processing. The Buyer shall remain authorized to collect this claim even after the assignment. SHW's right to collect the claim itself shall remain unaffected thereby. However, SHW undertakes not to collect the claim as long as the Buyer fulfils the payment obligations from the proceeds collected, is not in default of payment and, in particular, has not filed for bankruptcy or composition or insolvency proceedings or has not suspended payments. However, if this is the case, SHW may demand that the Buyer informs SHW of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment.

13.5 If the Product is processed with other objects not belonging to SHW, SHW shall acquire co-ownership of the new product in the ratio of the value of the Product (final invoice amount including VAT) to the other processed objects at the time of processing. In all other respects, the same shall apply to the object created by processing as to Product delivered under reservation of title.

13.6 If the Product is inseparably combined with other objects not belonging to SHW, SHW shall acquire co-ownership of the new product in accordance with the provisions of Section 13.5. If the combining results in the Buyer's object being regarded the main object, the Buyer shall transfer co-ownership to SHW on a pro rata basis.

13.7 SHW shall be obliged to release the securities it is entitled to at the Buyer's request to the extent that the realizable value of SHW's securities exceeds the claims to be secured by more than 10 %; the selection of the securities to be released shall be at SHW's discretion.

#### **14. Jurisdiction and applicable law**

14.1 The exclusive place of jurisdiction for all legal disputes arising from or in connection with agreements based on these General Terms and Conditions of Delivery and Assembly shall be the court having jurisdiction for SHW's place of business in Aalen. However, SHW shall also be entitled to file suit against the Buyer at the Buyer's general place of jurisdiction.

14.2 The law of the Federal Republic of Germany shall apply exclusively, without reference to international private law and the UN Convention on Contracts for the International Sale of Goods.

#### **15. Miscellaneous**

15.1 All declarations of legal relevance, including deviations from these Terms and Conditions of Delivery and Assembly or other

ancillary agreements, reservations, amendments or supplements to an agreement based on these General Terms and Conditions of Delivery and Assembly, must be made in writing or confirmed in writing by SHW in order to be effective. This shall also apply to any amendment of this written form requirement.

15.2 If any provision of these General Terms and Conditions of Delivery and Assembly is invalid or unenforceable, the legal validity of the remaining Terms and Conditions of Delivery and Assembly shall not be affected thereby. The same shall apply to any loophole in the agreement.

15.3 The assignment of any claims established between the parties under the contractual relationship to third parties shall be invalid.

\*\*\*