

General Terms and Conditions of Sale

Plastik-Maschinenbau Geng-Mayer GmbH, Bongard



1. General

- 1.1 All products and services ("Delivery Items") supplied by Plastik-Maschinenbau Geng-Mayer GmbH („Supplier“) to the buyer ("Buyer“) are exclusively supplied on the basis of the following General Terms and Conditions of Sale („these Terms“). Other terms, in particular any purchasing terms by the Buyer, do not apply, regardless of whether they have been expressly rejected by Supplier or not. Deviating terms of the Buyer will also not be deemed to be accepted by an order confirmation of the Supplier or the execution of an order without reservation.
- 1.2 These Terms also apply to all future transactions between Supplier and Buyer.

2. Offers

- 2.1 Offers by the Supplier are subject to change and non-binding.
- 2.2 Unless otherwise agreed, a binding contract will be only established upon the written order confirmation by the Supplier. All agreements between Buyer and Supplier or their employees and representatives outside of these Terms require and are subject to the written confirmation by Supplier.
- 2.3 Supplier reserves any and all property rights and copyrights to samples, cost estimates, drawings, weights and dimensions as well as all other tangible and intangible documents, including in electronic form. Buyer shall not disclose these documents to any third party without Supplier's written consent.
- 2.4 For the manufacturing of specific products, the Supplier relies on the documents (data, drawings, samples, models and similar documents) provided by the Buyer. The Buyer is responsible for the correctness, technical feasibility and completeness of such documents. The Supplier is not obliged to review these documents. The Buyer is responsible that the use of such documents does not infringe any third-party rights and will indemnify and hold the Supplier harmless of any losses resulting from such infringement.

3. Scope of Delivery

- 3.1 Supplier's written order confirmation exclusively defines the Supplier's scope of supply.
- 3.2 Supplier is entitled to partial deliveries to the extent that the Buyer can reasonably be expected to accept partial delivery.
- 3.3 Details provided by the Supplier on the Delivery Items (such as weights, dimensions, usage values, resilience, tolerances or technical data) are only approximations unless the use for the agreed purposes requires exact conformity. Unless individually agreed otherwise, such details do not constitute any guarantee or representation for the specifications, condition, durability or other properties, they shall only describe and identify the Delivery Items. Supplier reserves the right to implement customary deviations or deviations on the basis of legal requirements or technical improvements as well as to use equivalent components, constructions or materials without consultation with the Buyer, provided that the use of the Delivery Items for the agreed purpose is not affected by such deviations.

4. Price and Payment Terms

- 4.1 All prices are net prices excluding applicable VAT. Unless agreed otherwise, the prices are based on ex works delivery (EXW, Incoterms 2010) from Supplier's site and exclusive of packaging.
- 4.2 Supplier is entitled to invoice all additional costs resulting from change requests by the Buyer, even if Supplier has confirmed the change request, provided the Supplier has notified the Buyer of the possibility of additional costs.
- 4.3 The Buyer may only withhold or set-off payments based on counterclaims that are undisputed or have been finally recognized by a court.
- 4.4 Unless otherwise agreed, Buyer shall pay the price for equipment and accessories on the account of Supplier without any deductions in accordance with the following schedule:
 - a. 50% of the price upon written order
 - b. 45% upon ready for shipment
 - c. 5% upon arrival at Buyer's destination

For the delivery of spare parts and other services, the following payment terms apply: Payment within 30 days of the invoice date. A 2% discount applies if payment is made within eight days of the invoice date.

Payment is completed when Supplier can freely dispose of the full amount.

- 4.5 In case the Buyer is in default with any payment, Supplier is entitled to default interest in the amount of six (6) percentage points above the base rate of the ECB as of the due date. Supplier reserves the right to claim additional damages resulting from the default of payment.
- 4.6 If the Buyer does not strictly comply with its payment obligations, the Supplier may also suspend and withhold performance of any obligations until such date as Buyer complies fully with the payment obligations.

5. Delivery Time, Delays

- 5.1 All details in an offer or an order confirmation on expected delivery dates are not binding, unless expressly agreed otherwise.
- 5.2 In the event that a binding delivery period is agreed, the delivery period will only start as soon as all commercial and technical questions have been agreed between the parties, and the Buyer has performed all his duties in a timely manner, in particular the payment of all agreed advance payments. Otherwise, or in case of any agreed change request, the delivery period is extended by a reasonable period of time, unless the Supplier is responsible for the delay.
- 5.3 The compliance with the agreed period of delivery is subject to complete and timely receipt of Supplier's deliveries from sub-suppliers. Supplier will notify the Buyer of any expected delays without undue delay.
- 5.4 In the event that the Buyer is responsible that the shipment or acceptance of the Delivery Items is delayed, the Buyer will reimburse the Supplier for any additional costs resulting from such delay.
- 5.5 In the event that any delay of delivery is a result of force majeure, industrial dispute or other circumstances in the sphere of the Supplier or its sub-suppliers which are outside of the control of Supplier, the delivery time is extended reasonably. Supplier will notify the Buyer of the start and the end of such circumstances without undue delay. If such circumstances persist for more than three (3) months, either party is entitled to terminate the contract.
- 5.6 In the event that the Supplier is in delay and the Buyer incurs a resulting damage, the Buyer is entitled to liquidated damages after the expiry of a grace period of 2 months. The liquidated damages amount to 0.5% per completed week of delay, but no more than 5%, each of the contract value of the relevant section of the Delivery Items that could not be used for the agreed purpose as a result of the delay.
The Buyer is entitled to terminate the delivery contract in accordance with statutory law, upon the expiry of a reasonable period of time granted by the Buyer to the Supplier following the due date for the delivery the Delivery Items.

All other rights of Buyer resulting from a delay by the Supplier are hereby excluded.

6. Risk of Loss, Acceptance

- 6.1 The risk of loss will pass to the Buyer when the Delivery Items have left the Supplier's site; this also applies in case of partial deliveries or if the Supplier has agreed to pay shipping fees or to arrange for shipment and installation. In the event that an acceptance is required, the risk of loss passes upon the date of acceptance. The acceptance must be completed without undue delay following the Supplier's notification of acceptance readiness. The Buyer is not entitled to refuse acceptance for minor defects.
- 6.2 In the event that the shipment or acceptance is delayed as a result of circumstances for which the Supplier is not responsible, the risk of loss passes to Buyer upon the notification that the Supplier is ready for shipment/acceptance. At Buyer's cost, the Supplier will obtain all reasonable insurance policies requested by the Buyer.

7. Retention of Title

- 7.1 The Supplier retains title to the Delivery Items until full payment of the price and all other claims under the delivery contract. Any Delivery Item that is subject to retention of title is hereinafter referred to as "Secured Goods".
- 7.2 This also applies to international deliveries. In the event that the laws and regulations of the destination country do not permit such retention of title, the Buyer will provide Supplier with equivalent security for his claims against the Buyer.
- 7.3 Buyer shall insure the Secured Goods at its cost against theft, breakage, fire, water damage and other damages.
- 7.4 Buyer will not sell, pledge or create any lien over the Secured Goods. In case of pledges, seizures or other third-party disposals, the Buyer shall notify the Supplier without undue delay.

- 7.5 In the event that the Buyer is in breach of contract, in particular in default of payment, the Supplier is, upon prior warning with reasonable notice, entitled to repossess the Secured Goods and the Buyer is obliged to return the Secured Goods to Supplier.
- 7.6 The Buyer is entitled to resell the Secured Goods in the ordinary course of business. Buyer hereby assigns to Supplier all claims against the acquirer resulting from the resale of the Secured Goods. This assignment applies regardless of whether the Secured Goods are resold with or without being processed. The Supplier hereby accepts the assignment. The Buyer continues to be entitled to collect the assigned claims. The Supplier's rights to collect the claims shall remain unaffected, but the Supplier will not collect the claims as long as the Buyer is not in default with payment obligations, no application for the opening of an insolvency proceeding over the Buyer's assets is filed or the Buyer does not cease all payments.
- 7.7 The Buyer will always process or transform the Secured Goods in the name and on behalf of the Supplier. In this case, the Buyer's vested right (*Anwartschaftsrecht*) continues with respect to the processed or transformed good. If the Secured Goods are processed with other goods not owned by the Supplier, the Supplier acquires a co-ownership in the new good in proportion of the value of the Secured Goods to the value of the other processed goods as of the time of processing.
- 7.8 The Buyer is obliged to treat the Secured Goods with care and will only use them in accordance with the manuals and for the agreed purpose.
- 7.9 The Supplier shall release collaterals on the request of Buyer to the extent their value exceeds the value of the secured claims by more than 20%.

8. Notification of Defects and Warranty

- 8.1 Buyer's warranty rights pursuant to clause 9 are subject to Buyer's examination of the Delivery Items upon delivery and Buyer's due notification pursuant to Sec. 377 Civil Code (BGB). The notification must be in writing or in text form and include a specific description of the defect; it must be issued within two working days after delivery or two working days after discovery of a hidden defect. Buyer may not reject delivery or acceptance of the Delivery Items based on minor defects. Transport damages must be stated on the consignment note. To the extent that Buyer fails to duly notify defects, warranty claims are excluded.
- 8.2 Supplier's warranty is limited to the scope of supply described in the order confirmation. This also applies to repair orders or modification of prior deliveries or third-party equipment; the term "prior deliveries" also includes Delivery Items whose limitation period according to clause 11.1 has expired.
- 8.3 Minor defects that do not have any direct or noticeable effect on the function or the quality of the Delivery Items, in particular optical or similar defects, are excluded from any warranty.
- 8.4 In the event that the Delivery Items are used and not newly manufactured items, the Delivery Items are sold „as is“ excluding any warranty rights. The liability for fraud remains unaffected thereby.

9. Warranty Rights

For defects in material or title of the Delivery Items, Supplier grants Buyer the following warranty rights, subject to clause 10 and excluding all other contractual or statutory warranty rights:

- 9.1 Supplier shall replace or repair all parts of the Delivery Items that are proven to be defective prior to passing of risk. Buyer shall notify Supplier of such defects without undue delay in writing or in text form. Replaced parts will become the property of Supplier.
- 9.2 Buyer shall grant Supplier the opportunity and time to perform all repairs or replacements which Supplier deems necessary or appropriate; otherwise Supplier shall be released from any all warranty obligations and liability for the resulting consequences. Only in urgent cases of risks to operational safety or to avert disproportionate further damage, of which Supplier needs to be promptly informed, Buyer has the right to remedy the defect itself or through third parties at Supplier's cost.
- 9.3 Supplier shall bear the direct costs for the repair or replacement of defective parts of the Delivery Items, including shipping costs and the costs for installing and removing parts. Existing tools and lifting equipment as well as technicians and support staff shall be provided by the Buyer.
- 9.4 The Buyer bears the reasonable costs for unjustified warranty claims (e.g. claims for Delivery Items that were not defective); this shall also apply in case Supplier granted warranty rights erroneously without an obligation to do so.
- 9.5 The Buyer has the statutory right to withdraw from the Contract if the Supplier fails to repair or replace the Delivery Items within a reasonable deadline set by the Buyer. In case of a minor defect, Buyer is only entitled to a reduction of the purchase price; otherwise the right to a reduction of the purchase

price is excluded.

Further rights are set out in clause 10 of these Terms.

- 9.6 The warranty is in particular excluded under the following circumstances regarding the Delivery Items: improper or inappropriate use, incorrect installation or start-up by the Buyer or third-parties; normal wear and tear; improper or negligent treatment; improper maintenance; use of improper utilities; improper construction or construction basis; electro-chemical or electrical influences, each unless the Supplier is responsible for these circumstances.
- 9.7 In the event that the Buyer or a third party repairs or replaces a part improperly, Supplier does not take any responsibility for the resulting consequences. This also applies to changes to the Delivery Items performed by Buyer without the prior written approval of Supplier.
- 9.8 In the event that the use of the Delivery Items results in a infringement of intellectual property rights or copyrights at the agreed destination, Supplier shall - at its own costs - ensure that Buyer can use the Delivery Items or, in a manner that is appropriate for Buyer, modify the Delivery Items in such way that they do not infringe any third-party rights. In the event that this is not possible within a reasonable time and at reasonable cost, the Buyer is entitled to withdraw from the contract. Under these circumstances, Supplier is also entitled to withdraw from the contract.
- 9.9 Subject to clause 10, clause 9.8 sets out the exclusive remedies for infringements of third party rights. The obligations of Supplier are subject to the following conditions:
- The Buyer will notify Supplier promptly of the alleged infringement of intellectual property rights or copyrights,
 - The Buyer will reasonably support Supplier in the defense against the third party claims and allows modifications in accordance with clause 9.8,
 - Exclusive reservation of all defense rights (including out-of-court settlements) to Supplier, and
 - The defect in title is not the result of an instruction, a unilateral modification of the Delivery Items or the use of the Delivery Items outside the agreed purpose by the Buyer.

10. Liability

- 10.1 Supplier's liability for losses beyond the Delivery Items in contract, tort or otherwise is limited to:
- Gross negligence or intentional misconduct of its legal representatives or vicarious agents pursuant to Section 278 of the German Civil Code,
 - Fraudulently concealed defects or breaches of guarantees, and
 - Negligent or intentional breaches of essential contractual obligations, which are required to perform the purpose of the contract and on which the Buyer relied and ought to have relied.
- 10.2 In case of gross negligence and negligent breaches of essential contractual obligations, Supplier's liability is limited to the reasonably foreseeable damage.
- 10.3 The statutory liability under the German Product Liability Act and the liability for negligently or intentionally caused bodily injuries or death remains unaffected.
- 10.4 Any further liability of the Supplier for damages is excluded.

11. Limitation of Time

- 11.1 Warranty claims are subject to a limitation of 12 months as of delivery respectively acceptance, if an acceptance is required.
- 11.2 All damage claims pursuant to clause 10 are subject to statutory limitations of time. If longer statutory limitations apply for buildings and recourse claims, these limitations apply.

12. Use of Software

- 12.1 To the extent that the Delivery Items include software, the Supplier grants the Buyer a non-exclusive right and license to use such software and its documentation. This right and license is limited to the use of the Delivery Items for the agreed purpose. The use of software on more than one system is prohibited.
- 12.2 The Buyer may only copy, modify, translate or disassemble the software within the statutory legal scope (Sections 69a et seq. of the German Copyright Act). The Buyer will not remove or modify any manufacturer or copyright marks without the prior written approval of Supplier.
- 12.3 All other rights in the software and its documentation, including with respect to copies and the source code, shall remain with the Supplier or the software licensor. The grant of sublicenses is not permitted.

13. Compliance with Laws and Export

- 13.1 The Buyer shall comply with all laws and regulations and decisions on export control in the jurisdiction

in which the Buyer operates as well all other jurisdictions. The Buyer will timely obtain all permits, licenses and other approvals required for the use or export of the Delivery Items in accordance with all applicable laws, regulations and decisions.

- 13.2 The Supplier is entitled to withhold all deliveries and services to the Buyer if the Buyer would violate any export control laws or regulations or if not all necessary permits have been obtained, provided that this is not a result of Supplier's negligence or intentional misconduct.

14. Confidentiality

All information disclosed by a party in connection with the delivery which is marked as „confidential“ or otherwise evidently of confidential nature is treated as „Confidential Information“ subject to this clause 14, unless (i) the Confidential Information was already lawfully known, or became lawfully known to the receiving party, (ii) the Confidential Information is in, or comes into, public domain other than due to wrongful disclosure by the receiving party, or (iii) disclosure of the Confidential Information is required by law or any binding governmental decision. The receiving party shall (i) treat such Confidential Information as confidential and not disclose it to third parties, (ii) use the Confidential Information only for the performance of the delivery contract, and (iii) limit the access to the Confidential Information to those employees and contractors of the receiving party who need to have access for the performance hereunder and who are subject to comparable confidentiality obligations.

15. Termination for Cause

Either Party (the "Non-Defaulting Party") may terminate a delivery contract if the other Party (the "Defaulting Party") (i) commits a material breach of contract and fails to cure the breach within thirty (30) days of notice from the Non-Defaulting Party, or if it is not possible to cure such breach within thirty (30) days of such notice, fails to commence to cure the breach within thirty (30) days, (ii) ceases to do business, or (iii) files for insolvency or becomes or is otherwise deemed insolvent. Buyer's failure to perform its payment obligations shall be deemed a material breach of contract.

16. Severability

In the event that specific provisions of these Terms are invalid or nor enforceable, the validity or enforceability of such provisions shall not be affected thereby.

17. Applicable Law, Jurisdiction

- 17.1 All legal relations between the Supplier and the Buyer are exclusively governed by the laws of the Federal Republic of Germany. The application of the UN Convention on the International Sale of Goods is hereby excluded.

- 17.2 Exclusive place of jurisdiction is at the courts competent for the principal seat of Supplier. Supplier is, however, entitled to also file claims at the courts competent at the seat of the Buyer.