

“General Terms and Conditions of Sale and Delivery” of the Company Gerl Baumaschinen Handel Ges.m.b.H. (Register of Companies Nr. 89432v).

This text contains a translation of the “Allgemeine Verkaufs- und Lieferbedingungen – AVLB” (“General Terms and Conditions of Sale and Delivery”) written in German. In any case, especially in doubt, the German text is authentic and shall exclusively be relevant for the parties’ rights and duties!

I. General

1. Scope: The offer provided by the seller and made by the purchases in connection with this “General Terms and Conditions of Sale and Delivery” contains all aspects of the deal including including pursuant orders. Terms and Conditions of the purchaser will under no circumstances be legally binding for the seller, even if there should have been any reference to them in the correspondence or even if the purchaser should not have formally contradicted.

2. Formal Requirements:

2.1. Declarations in context with this deal are only binding in written form, as long as this AVLB do not state the opposite. This is meant to be a condition of validity rather than a mere rule of doubt, thus oral declarations are invalid (especially in context with certain properties of the goods subject to the contract).

2.2. The seller will not be legally bound to the contract until full acceptance of the purchaser’s offer by the seller, either by written confirmation or by delivery of the goods subject to this contract. No rights or claims will result for the purchaser in case the seller should not accept his offer.

2.3. The payment of the price contained in an (even not binding) offer of the seller or pro-forma-invoice is deemed to be a legally binding order.

3. Forum, Applicable Law:

3.1. In case of claims or disputes resulting from or in context with a contract with purchasers based within the European Union or an EFTA State the parties agree on the exclusive jurisdiction of the competent court in Austria and the international jurisdiction of Austria. All disputes arising out of or in connection with contracts with purchasers based outside of the European Union or an EFTA State shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one the purchaser at the purchaser’s venue.

3.2. This contract shall be guided exclusively by Austrian material law. The United Nations Convention on Contracts for the International Sale of Goods will under no circumstances be relevant for this contract.

II. Prices

1. Price: Prices of sale and/or delivery are – unless otherwise agreed – ex works/depot seller and contain no VAT, freight, shipment, insurance, packing or other additional costs.

2. Estimates: Estimates of costs for rectifications or other additional works are deemed not to be binding; the purchases will be charged on the base of effective time- and material-input.

3. Additional Costs: All additional costs, such as taxes, debit- or contract-fees, agent’s commissions, et cetera, have to be paid by the purchaser.

III. Payment

1. Expiration:

1.1. Any deposit – unless otherwise agreed – is due to be paid within three days from receipt of the offer (fully booked on the seller’s account).

1.2. Means of payment: Unless otherwise agreed, the payment of the purchase price (respectively the rest of the purchase price in case of a deposit) is due at latest on the day of delivery before takeover of the machines/goods subject of this contract.

1.3. Chargeability of payments: Payments by the purchaser are charged against debts in the following orders: interests, costs and taxes, fees for services and labour, spare parts, machines and goods; in case of posts of the same category payments will be charged against the elder post. The seller is not bound to accept different instructions of the purchaser.

1.4. Set off: The purchaser may not set off own claims against his debts, unless otherwise accepted by the seller (by written acceptance) or stated by the court.

1.5. Delay of payments: Should the purchaser delay the payment of any debts at due date;

a) all unpaid debts of the seller, even if not actually due, will become due and are to be paid with immediate effect;

b) the seller has the right to declare the cancellation of the actual and – at his discretion – all other contracts with the purchaser (after a cooling-off-period of the least three days);

c) the seller has the rights to retain all deliveries and other agreed performances until payment of all debts (according to Paragraph III.5.a) by the seller;

d) the seller has the right to withdraw all machines, equipment and goods delivered to the purchaser (even without cancellation);

e) the purchaser is bound to pay an interest rate of 1% per month (monthly accrual of interest) as well as all debt collecting-, demand-, and other expenses to the seller.

Other rights or claims stated by relevant law to the seller remain unaffected. The purchaser has to return all goods subject to this contract without delay to the seller at his own expense (place of performance: seat of the seller) and to compensate the seller for all his expenses including all lost profits of the actual deal.

IV Reservation of Title

1. Reservation of title: The goods subject to this contract remain property and

ownership of the seller until full payment of the purchase price and all other debts (including all incidental expenses). As long as this reservation of title remains effective, all dispositions concerning the goods subject of this contract are strictly prohibited (especially transfer of ownership, renting out or pledge of those items).

2. Obligation to inform the seller: As long as the mentioned reservation of title remains valid, the purchaser has

a. to inform the seller about destruction, seizure or confiscation of those items;

b. has to compensate the seller for all expenses caused by the prosecution of his reservation of title.

3. Insolvency of the purchaser: In the case of insolvency or similar legal procedures concerning the purchaser, or when an application to open such a procedure should be rejected by the court due to lack of sufficient property, the seller has the right to cancel this or even all other (sales-)contracts with the purchaser without cooling-off-period and to withdraw all goods delivered to that purchaser.

V Delivery

1. Lead Time: Lead times – if agreed - will be calculated from the acceptance of the offer by the seller.

2. Excess of lead times: An excess of lead times up to six weeks does not entitle the purchaser to any claims against the seller. Should the agreed lead time be exceeded more than six weeks caused by the seller’s gross negligence, the purchaser has the right to cancel the contract after a cooling-off-period of at least two weeks.

3. Indemnification: The purchaser is not entitled to claims for indemnification unless the seller is to be blamed for the breach of contract by gross negligence.

4. Delivery: Compliance with lead times will be presumed if the seller advises to be ready for delivery to the purchaser within the agreed lead time.

5. Place of performance: In any case, even when shipment to the purchaser is agreed, the seat of the seller is the legal and contractual place of performance. Unless otherwise agreed, all deliveries shall therefore be EXW [seat of the seller] as per Incoterms 2010.

6. Shipment: Shipment of the goods subjects of this contract (if agreed) always takes place at the purchaser’s risks and costs based on INCOTERMS (as far as agreed). Any delays at shipment, transport, customs formalities or otherwise in context with provisions aiming to bring the goods to the purchaser never fall within the responsibility of the seller.

VI Take Over

1. Purchaser’s responsibilities at takeover:

1.1. After being offered so by the seller, the purchaser has to take over the goods subject to this contract personally or by an entitled representative.

1.2. Unless otherwise agreed, all due payments have to be effected until Take Over, otherwise the seller shall be entitled to refuse delivery.

2. Refusal of Take Over:

2.1. The purchaser is not entitled to refuse take over by claiming defects of the goods subject to this contract.

2.2. Should the purchaser delay or refuse take over, he is bound to pay 0,2% of the purchase price each one day of delay to the seller (other rights of the seller remain unaffected). The seller is entitled to store the goods by himself or by warehouse or he may cancel the contract after setting an extension of time of at least three days.

3. Cancellation-fees:

3.1. Should the seller cancel the contract due to a breach of contract by the purchaser, the latter is bound to pay a hereby agreed (strict liability) penalty (§1336 Austrian Civil Law) of 20% of the purchase-price (immediately due) whilst other claims of the seller (such as indemnification, expenses for return of goods, etc) remain unaffected.

3.2. In addition to paragraph 3.1 any deposit paid by the purchaser lapses in favour of the seller (the lapsed amount will be charged against the penalty agreed in par. 3.1)

VII Warranty for used machines

1. Used Machines. The machines/goods subject to this contract are sold in used condition as inspected and tested by the purchaser. The seller himself has bought them in used condition, thus has no knowledge of their condition in detail. Descriptions of each kind (such as on websites, in catalogues, announcements, advertisement, etc) about the subject of this contract are just deemed as general tentative information (especially the actual level of hours that machines have been in use, which need not necessarily comply with the reading on the corresponding gauges).

2. Exclusion of Guarantee or Warranty: The seller only guarantees the subject of this contract is free of liens or other third parties rights. There shall be no other liability (guarantee or warranty) of the seller. The seller does neither promise any special or generally supposed condition, quality, property or feature (such as being free of defects, etc) nor the serviceability as such. The purchaser waives (as far as possible) all rights or claims based on indemnification, warranty, error and laesio enormis (§ 934f ABGB Austrian Code of Civil law) against the seller.

3. Resold Machines. In case of machines/goods resold by the purchaser (being charged against the purchase price of the machines/goods subject to this contract), the purchaser guarantees those machines/goods are his full property and free of liens or other third party rights.