

## **General Terms and Conditions for the Sale and Delivery of Machinery outside Germany**

### **I. General**

1. These General Terms and Conditions for the sale and delivery of machinery shall exclusively apply between the companies of the Trützschler group

Trützschler Group SE, Mönchengladbach or

Trützschler Nonwovens GmbH, Dülmen or

Trützschler Card Clothing GmbH, Neubulach

as SELLER and the BUYER to all offers of the SELLER and to all contracts of sale and delivery of machinery or services made by the SELLER, unless deviated from by written agreement between the parties or expressly accepted by the SELLER in writing. BUYER's deviating terms and conditions of sale and payment shall not be recognised and will not be binding upon the SELLER unless agreed to in writing by the SELLER. The contract of sale and delivery between SELLER and BUYER shall be hereunder referred to as „Contract“.

2. The Contract shall be considered to be concluded between the parties and shall take effect only if either signed by the parties or when the SELLER has, pursuant to its offer, accepted the order of BUYER by its confirmation of order.

### **II. Quotations and orders**

Written quotations by the SELLER shall be binding on the SELLER for 3 months from the date of quotation. Orders which are not based on a prior written quotation shall not be binding on the SELLER until SELLER's written order confirmation has been received by the BUYER, or the Contract has been signed between the parties.

### **III. Information, specifications and drawings**

Any oral or written information and all specifications, descriptions and drawings in catalogues, datasheets, circulars, advertisements, price lists or other documentations shall be binding only if explicitly referred to in the Contract.

### **IV. Prices**

1. Unless otherwise expressly agreed in writing, all prices are FCA SELLER's location, Germany (as per INCOTERMS, latest edition) and exclude value added tax, customs and other public dues. Required licences, permits, approvals, consents or other formalities outside Germany shall be obtained by the BUYER. Unless otherwise agreed, packing is not included in the prices.

2. For deliveries within the European Union, the Buyer shall advise its VAT identification number prior to the contractually stipulated delivery date as evidence of its exemption from

value added tax. If the SELLER does not receive the complete identification number in time, he will charge value added tax at the rate valid at the time of invoicing.

3. If the Buyer ships goods outside the European Union, which were delivered by the SELLER inside the European Union, he may provide the SELLER within one month after SELLER's shipment with a proper certificate of export for these goods instead of indicating his VAT identification number in order to avoid paying VAT to the SELLER.

## **V. Payment**

1. Payment shall be made in EUR (or as otherwise specified in the Contract). Unless otherwise agreed upon, invoice amounts are to be paid net within thirty (30) days after invoice has been issued.

2. In case it is agreed that the total or a part of the purchase price shall be paid out of a letter of credit the following conditions shall apply: Such payment shall be made without any deduction and reserve out of an irrevocable letter of credit (L/C) subject to the latest UCP, which shall be opened in a form acceptable to the SELLER by a first class bank acceptable to the SELLER at the BUYER's cost, including the confirmation fee in Germany, in favour of the SELLER and which shall be payable at and be confirmed by a bank in the Federal Republic of Germany acceptable to the SELLER. The L/C must also allow payments for partial deliveries. Its validity must not expire earlier than 4 weeks after the agreed regular or expected delivery date.

3. Upon SELLER's request the BUYER shall have to arrange for the required extension of the validity of the L/C.

4. In case of the supplies being put in store payment shall be made against SELLER's invoice, certificate of origin (if applicable) and warehouse receipt only. This provision shall also be expressly stipulated in the L/C to be opened by the BUYER.

5. Any payment to be made by the BUYER under the Contract shall be effected or shall be deemed to be duly effected only if and when and to the extent it has actually been credited in full without reserve on the SELLER's bank account with its bank in the Federal Republic of Germany.

6. Any right of the BUYER of set-off against the SELLER's claims for payment, and any lien of the BUYER on payments having become due is excluded.

## **VI. Transfer of Risks – Retention of Title**

1. Risk of loss or damage to the supplies shall pass to the BUYER as follows:

- according to the INCOTERM agreed in writing (INCOTERMS, latest edition)

- in case no INCOTERM has been agreed in writing: according to FCA SELLER's premises, INCOTERMS, latest edition

- however: if the BUYER wrongfully fails to effect the shipment of the supplies, at the time the supplies are put in store by the SELLER.

2. Notwithstanding delivery and the passing of risk in the supplies, or any other provision of these conditions, the property in the supplies shall not pass to the BUYER until the SELLER has received payment in full of the price of the supplies.

## **VII. Delivery**

1. The agreed delivery periods shall commence on the effective date of the Contract, but in no event earlier than on the date on which all of the following conditions (if applicable) have been fulfilled:

- in case an import licence is required in the country of the BUYER: receipt by the SELLER of a copy of such import licence issued; and/or

- in case of an agreed advance payment: unconditional receipt of such advance payment by the SELLER; and/or

- in case of agreed payment out of a letter of credit: this letter of credit having been opened, confirmed and being operative in compliance with the agreed conditions (clause V).

2. The agreed delivery date concerned shall be deemed to be the last working day of the month in which the agreed delivery period expires. The actual delivery date shall be the date on which the risk of loss or damage is actually transferred from the SELLER to the BUYER.

3. If any delivery is delayed for reasons not attributable to the SELLER the agreed delivery periods shall be deemed to be extended by the period of time during which the said reasons prevail.

4. If any delivery is delayed for reasons solely due to SELLER's fault and the BUYER has suffered any damage, the SELLER shall be liable to pay to the BUYER, to the exclusion of all further claims of the BUYER, for each full week of such delay in delivery and after considering a grace period of two weeks liquidated damages amounting to zero point five percent (0.5 %) of the purchase price for the supplies being delayed. All claims of the BUYER for liquidated damages on account of SELLER's delay in delivery shall be totally limited to a maximum of five percent (5 %) of the said purchase price.

5. Delay in delivery, even if such delay is attributable to the SELLER, shall not constitute any right for the BUYER to terminate the Contract unless the delay exceeds three (3) months.

6. BUYER's rights according to this clause excludes all other claims and remedies.

## **VIII. Examination of Supplies**

The supplies must be examined by the BUYER immediately on arrival, and any defect discoverable on examination, which is to be claimed against the SELLER, must be notified to the SELLER in writing without undue delay after receipt of the supplies. The notice shall contain a description of the defect. Late complaints will not be accepted by the SELLER.

## **IX. Inspection of the Supplies during Manufacture and Test before Delivery**

1. If the Contract provides for the supplies to be inspected during manufacture, such inspection shall, unless otherwise agreed in writing, be carried out at the place of manufacture during normal working hours. In such a case, the SELLER shall notify the

BUYER or his representative of the tests of the supplies ready for delivery in sufficient time to permit the BUYER to be present at the tests. If, in spite of such notice, the BUYER is not present at the tests, a copy of the test report shall be communicated to the BUYER who shall not be entitled to contest the correctness of such report.

2. If, during any test referred to in this clause, the supplies are found to be defective, the SELLER shall remedy the defect within a reasonable time.

## **X. Warranty**

1. The SELLER gives a mechanical warranty for all machine parts; this warranty is effective for a total period of twelve (12) months after mechanical and electrical commissioning, however, the total warranty period shall not exceed eighteen months (18) after notice of readiness for shipment or date of shipment (if included in the scope of the Contract).

2. Condition for the effectiveness of the warranty is proper storage after shipment, proper erection and start-up and sufficient conservation in case of any delays between erection and mechanical and electrical commissioning or start-up respectively.

3. The BUYER shall notify the SELLER in writing without undue delay of any defect occurred. The notice shall contain a description of the defect. Delayed complaints will not be accepted by the SELLER.

4. The SELLER warrants that the supplies:

- have been manufactured professionally and without defects using suitable sound material,
- comply with the quality and specifications as stipulated in the Contract and will, on the condition of proper operation and careful maintenance, meet the performance as stipulated in the Contract,
- (in case of spare parts) will be suitable for the agreed purpose as spare parts, i.e. will be interchangeable.

5. The SELLER shall not be liable for the supplies being fit for a particular purpose unless otherwise agreed upon.

6. The SELLER's warranty shall not be extended to normal wear and tear.

7. Pursuant to the warranty under this Clause, the SELLER undertakes to remedy proven defects of the aforementioned kind at its option either by repair or by replacement, provided that those defects have been specifically claimed by the BUYER in writing without undue delay. For the purpose to prove the defects claimed, the BUYER shall send back to the SELLER the supplies claimed to be defective.

8. Any liability by the SELLER under this warranty according to this Clause shall be excluded if the respective defect or damage results from non-professional and/or non-proper operation and/or maintenance or another non-proper handling, or if repairs or modifications of the machine have been carried out by BUYER or a third party without the SELLER's express consent in writing.

9. Replacement deliveries or return deliveries under this Clause shall be carried out by the SELLER according to the delivery terms of the Contract at no cost to BUYER. Parts having been replaced remain with the SELLER. Any necessary formalities are to be provided for by BUYER.

## **XI. Product Liability**

1. The SELLER is liable for personal injuries and for damage to real property or movables intended for non-commercial purposes according to the rules concerning Product Liability. For damage to BUYER's property the SELLER shall only be liable within the scope of the benefits of its liability insurance.

2. The SELLER is under no circumstances liable for personal injury or damages as stated in this clause if such personal injury or damages are due to use of the delivered supplies contrary to the SELLER's manuals or technical specifications or are due to negligent acts on the part of others than the SELLER.

## **XII. Liability**

Except in so far as expressly provided for in the Contract, if any, and in clauses VII, X and XI of these General Terms and Conditions for the Sale and Delivery of machinery, the SELLER does not make or undertake any representations, warranties, responsibilities, or liabilities under the Contract, in tort or in contract, for reasons, whatsoever. Particularly, the SELLER does not assume any liability for any of the following categories of damage, costs, losses or expenses and BUYER shall release the SELLER from any liability therefore:

(a) loss of profit, anticipated profit, loss of production, loss of use or business interruption and the costs of obtaining or maintaining finance (in all cases whether direct or indirect); and

(b) unless not covered by (a), indirect or consequential damages, costs, losses or expenses.

## **XIII. Confidential Information**

All commercial and/or technical information, data, specifications, drawings, other documents and software (collectively "the Confidential Information") delivered to the BUYER by the SELLER, shall remain the exclusive property of the SELLER, and shall under no circumstances be interpreted as an assignment of present or future intellectual property rights or similar rights to the BUYER by the SELLER. The BUYER shall at all times treat the Confidential Information as the SELLER's confidential property and shall under no circumstances use the Confidential Information to any purpose other than that contemplated hereby or disclose the same to any third party.

## **XIV. Force Majeure**

Notwithstanding anything else herein, no default, delay, or failure to perform on the part of the SELLER shall be considered a default, delay, or failure to perform if such action is due to causes beyond the SELLER's control, including war, riots, revolution, sabotage, requisition, piracy, natural cataclysms, such as violent storms, cyclones, earthquakes, tidal waves, flooding, lightning strikes, epidemics and quarantine, boycotts, explosions, fire, destruction of machinery or factories or other installations of no fault of the SELLER, action by the authorities, strikes of any form, including unofficial strikes and industrial action which does not involve formal interruption of work, lock-outs, stoppages, regardless of the reason, foreign-exchange restrictions, power restrictions, lack of transportation, defects or delays in supplies from the SELLER's sub-suppliers. The SELLER shall be entitled to terminate the sale or delivery, if the event of Force Majeure continues for more than six (6) accumulated

months. As financial consequence of such termination, the SELLER shall be entitled to be paid all duly incurred cost including cost for suspending and/or dissolving of orders to suppliers. In case of a surplus of advance and interim payments over cost incurred, such surplus shall be transferred to BUYER.

#### **XV. Use of software**

1. If the scope of delivery includes software, a non-exclusive right is granted to the BUYER to use the supplied software including its documentations. The software is left to the BUYER for use with the delivery item intended for this purpose. Use of the software in more than one system is prohibited, unless stated otherwise in the contract. The BUYER may only duplicate the software for preparation of a backup copy.
2. The BUYER can conclude a separate contract of deposit with the SELLER which covers the deposit of the source code with a notary to be named by the SELLER or at another place of deposit considered suitable by the SELLER, and adaptation of the source code to software updates as well as its restitution on the terms and conditions stipulated in the contract of deposit. The BUYER shall bear the costs of the deposit.
3. The BUYER agrees not to remove manufacturer's notes - and in particular copyright notes - or change them without the SELLER's express prior written consent.
4. All other rights in the software and the documentations including its copies shall remain with the SELLER or with the software supplier. The BUYER is not entitled to grant licenses.
5. The software is exclusively submitted in machine-readable form (code object) and only in the form saved in the delivery items. This does not apply to specific adaptations requested by the BUYER and program parts required for removal of malfunctions.

#### **XVI. Legal venue and applicable law**

1. The Contract shall be governed by and construed in accordance with the substantive Swiss law. The provisions of the UN Sales Convention (CISG) shall be excluded.
2. All disputes arising out of or in connection with the Contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce, Paris (latest edition) by one or more arbitrators appointed in accordance with the said rules. The place of arbitration is Zurich, Switzerland. The proceedings shall be conducted in the English language.
3. However, the SELLER may at its option sue the BUYER at the ordinary courts of law having jurisdiction in the country of the BUYER.