

MMC Hitachi Tool Engineering Europe GmbH

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E-Mail: info@mmc-hitachitool-eu.com
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General Terms of Trade

1. Issue of order

- 1.1. An order is not accepted until it is confirmed by us in writing.
- 1.2. Supplements, changes or verbal, auxiliary agreements made before the conclusion of contract likewise require our written confirmation to be effective.

2. Protected rights

- 2.1. We reserve the right of title and the copyright to illustrations, drawings, sketches, models, product descriptions, calculations or other documents that we produce. They may not be made available to others without our specific approval in writing and, on demand, shall be returned to us without delay.
- 2.2. We are not obliged to the purchaser to check whether the protected rights of third parties are violated by the submission of offers based on execution drawings sent in to us or other specifications stipulated by the purchaser in case of execution. If we nevertheless incur liability, the purchaser must release us from claims to recourse.
- 2.3. In case the purchaser is pursued due to a violation of protected rights by the goods delivered by us, the purchaser is obliged to inform us without delay and continuously of all matters that relate to the pursuit. In particular, we must be provided with all the necessary information and documents. If we deem it necessary to commission a lawyer or patent attorney to conduct any legal disputes, the purchaser is obliged to issue powers of proxy to this lawyer. The purchaser is free to appoint a further lawyer in addition.

3. Scope of the delivery obligation

- 3.1. Our offers are free of obligation and non-binding until the conclusion of contract.
- 3.2. Dimensions, illustrations, drawings, weights or other performance data are not assured characteristics unless they are specifically designated as such. They are only binding for the execution of an order if this has been expressly confirmed by us in writing. Gross weights and the size of crates are stated to the best of our knowledge, although without being binding.

4. Prices

- 4.1. Prices are ex-works and do not include packaging. Freight costs (unless these are contained in the price in accordance with a specific agreement) will be invoiced separately or charged by the carrier. Value-added tax at the prevailing rate will be added to the prices.

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Mitsubishi Bank
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IBAN-No.:DE7130010700000003703
USt-IdNr.: DE120955773

FOREIGN PAYMENTS: Tokyo Mitsubishi
Bank
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IBAN-No.:DE7130010700000003703
SWIFT-BIC CODE: BOTKDE33

Handelsregister Düsseldorf
HRB-Nr.: 47901
Geschäftsführer: Toru Yamaguchi
Prokurist: Albert Sadowski

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4.2. If more than four months pass from the conclusion of contract to the agreed date of delivery and our own costs or the prices of our suppliers have increased (e.g. due to a rise in material costs and/or wages, raises in import duties and taxes after conclusion of contract), our prices valid at the date of delivery or provision apply. If the price increase is more than 5%, the purchaser can withdraw from the contract by written declaration within one week from receiving notification of the price increase.

5. Terms of payment

5.1. Unless agreed otherwise in our written confirmation, payments are due in Euro within 10 days at 2% discount or in 30 days without any deduction – including part deliveries – from the date that the invoice was compiled. Discount is not granted if a balance is payable from older deliveries in our favour at the date of payment.

5.2. As a rule, invoices are sent electronically to the e-Mail address stated at the issue of order, unless a paper invoice is desired. Invoices are basically sent electronically until the recipient expressly complains of this.

5.3. Discountable bills of exchange and cheques are only accepted after specific agreement with us and then only to facilitate payment. They do not count as payment until they are encashed. Expenses for discount, bank charges and charges for bills of exchange are borne by the purchaser.

5.4. The purchaser cannot offset its own claims unless these counter-claims have been established by a court of law, are undisputed or have been recognised by us.

5.5. If the purchaser is in default of payment, we are entitled to charge interest at two percentage points above the discount rate of the German *Bundesbank* from the date concerned, unless the purchaser is able to prove that we have suffered lower losses. The pursuit of further-going default damages remains reserved.

5.6. If the purchaser fails to comply with its obligations of payment or does not do so in time (in particular, because a cheque it issues is not covered, if it stops making payments or if we become aware of other circumstances that seem likely to reduce the purchaser's creditworthiness), we are entitled to demand immediate repayment of the complete residual claim, even if we have accepted cheques. In the case of the foregoing circumstances, we are additionally entitled to make deliveries still outstanding under the contract or under other contracts only in return for advance payment or the provision of security.

6. Delivery time, Act of God, release from the duty of performance

6.1. Delivery dates or deadlines are free of obligation, unless they have been specifically designated as binding. A delivery time measured in days, weeks or months does not begin until all details of the execution have been clarified and both sides have agreed on all the conditions. Delivery dates are extended (without prejudice to our rights

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from default on the part of the purchaser) by the time that the purchaser fails to comply with its obligations (in particular, the obligations of payment under this contract or other contracts concluded with us).

- 6.2. If we are prevented from fulfilling our obligations because of the occurrence of unforeseeable Acts of God or of other events arising beyond our control and without culpability of a third-party attributable to us, which make the delivery possible for us in the first place or make it more difficult at economically viable conditions, the delivery deadline is extended to a reasonable extent, unless the delivery or service has become impossible. We shall inform the purchaser without delay of the extension of a delivery deadline and its likely duration. The aforesaid Acts of God or other events include matters such as war, hostilities, unavoidable difficulties in procuring materials or energy, unavoidable transport delays, strikes, lock-outs, regulatory action, a subsequent change to the order, non-arrival of official permits or other third-party authorisations required to execute the delivery or documents or statements from the purchaser required to execute the delivery that have been requested from third parties or the purchaser in good time, and non-delivery, incorrect or late deliveries by our suppliers. The foregoing regulations only apply to such Acts of God and other events of the aforesaid nature, which occur after the conclusion of contract or that only become known to us, without our culpability, after the conclusion of contract.
- 6.3. If the hindrance to performance lasts longer than three months, both we and the purchaser are entitled to withdraw from that part of the contract that is still outstanding at this date. If the delivery or service is made impossible by the circumstances stated above in 6.2, we are released from the obligation of delivery. If the quantity of goods available to us is insufficient to satisfy all of our purchasers due to the foregoing cases, we are entitled to reduce all delivery obligations at our dutiful discretion; in addition, we are released from delivery obligations.
- 6.4. If the shipment or the handover of goods at the purchaser's request is delayed or postponed for other reasons for which it is responsible, we are entitled to set a reasonable deadline to receive or collect the goods. Once this deadline has expired fruitlessly, we can otherwise dispose over the object of delivery and supply the purchaser at a reasonably extended delivery date.

7. Shipment

- 7.1. The risk of accidental destruction is transferred to the purchaser as soon as the goods are handed over to the party executing their transport. If shipment is delayed as a result of circumstances for which the purchaser is responsible, risk is transferred to the purchaser from the date of our notice of readiness to ship.
- 7.2. We shall take out insurance against transport damage at the purchaser's specific request, in its name and for its account, to the best of our judgement. Agreements made between us and the purchaser concerning the costs of transporting and insuring the goods apply solely as pure expense clauses and do not affect the transfer of risk. Unless specifically agreed otherwise, we decide upon the type of packaging and shipment to the best of our judgement. If we comply with shipment instructions

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issued by the purchaser, this is done at the risk of the purchaser. Packaging is not taken back.

8. Reservation of title

- 8.1. In order to secure all our existing and future claims against the purchaser, we reserve ownership to the goods delivered to the purchaser until all of our claims from the business relationship have been paid in full. The purchaser shall safeguard the reserved goods for us free-of-charge.
- 8.2. The purchaser is entitled to resell the goods delivered by us and subject to the reservation of title in the course of regular business transactions, to otherwise use these goods or oblige itself to these, as long as it is not in default of payment and there are no obvious circumstances that threaten our claims due to their resale etc. The purchaser is not entitled to pledge the reserved goods or assign them as security. In case of a resale, the purchaser is obliged in the relationship to its customer to in turn reserve ownership until its claim is settled. All claims against buyers that the purchaser accrues from reselling the reserved goods are assigned to us even from the date of the conclusion of contract with us. At our request, the purchaser is obliged to handover a declaration of assignment to us in the amount of our claims against the purchaser. It is not permitted to assign claims from the resale of reserved goods in favour of third parties, particularly to acquire credit.
- 8.3. The purchaser remains authorised to collect the claim assigned to us even after the assignment. Upon receipt of payment for the purchaser's claim in question, the purchaser is obliged to immediately settle our claim in the payable amount from the incoming payment. Our power to collect the claim ourselves remains unaffected by the authorisation of collection issued by the purchaser. We shall nevertheless not collect the claim, as long as the purchaser complies with its obligations of payment from the revenue it receives, is not in default of payment, an application has not been made to open insolvency proceedings against the purchaser's assets and it has not suspended payments. If one of the aforesaid circumstances applies, however, we can demand that the purchaser announces the assigned claims and their debtors to us, provides all the details required for collection, hands over the related documents and informs the debtors of the assignment.
- 8.4. If the reserved goods are processed by the purchaser, it is agreed that processing is performed in our name, for our account and for us as producer. We directly acquire ownership or – if processing involves materials from several owners or if the value of the processed item is higher than the value of the reserved goods – co-ownership to the newly created item in the ratio of the value of the reserved goods to the value of the item. In case we do not acquire such ownership, the purchaser even now transfers to us its future ownership or co-ownership to the newly created item as a precaution. If the reserved goods are combined or inseparably mixed with other objects to become a uniform item and if one of the other objects is regarded as the main object, the purchaser transfers to us (insofar as it owns the main item) proportionate co-ownership to the uniform item in the ratio stated in sentence 2.

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- 8.5. If the value of all the securities accruing to us exceeds the amount of all the secured claims by more than 20%, then upon the purchaser's request, we shall release an appropriate part of the security rights. We are free to choose which of the different security rights we release. A security right in this sense also includes the assignment of claims to us from the resale of the reserved goods to third parties.
- 8.6. The purchaser must ensure safe and proper storage of the objects owned or co-owned by us and insure these at their as-new value against theft, fire and other material damage at its own expense. The purchaser must notify us of third-party interventions, which could impair our ownership, without delay. In addition, it must do all required, in agreement with us, to avert danger. Insofar as advisable to protect the reserved goods, the purchaser must assign claims to us upon our request.
- 8.7. We are entitled to demand the return of objects belonging to us, particularly to pursue rights to selection or the assignment of the claim to counter-performance in insolvency proceedings, if the fulfilment of our claims by the purchaser is threatened. This applies, in particular, if insolvency proceedings are opened against the purchaser's assets or if its assets situation deteriorates considerably. The purchaser is obliged to refund all losses and the costs we incur due to a violation of the purchaser's obligations or due to action to counter third-party interventions.
- 8.8. The pursuit of the reservation of title and our distraints on the objects of our deliveries are not regarded as withdrawal from the contract.
- 8.9. If the reservation of title in the destination country abroad is ineffective or not effective in the scope foreseen here, the purchaser, at our request, shall cooperate in providing other securities, the effect of which comes closest to this reservation of title.

9. Liability for defects, warranty

- 9.1. The goods delivered by us must be inspected carefully by the purchaser for defects and quality without delay after their arrival. They are regarded as accepted if we do not receive a written complaint within eight work days after receipt of the goods, or if the defect was not recognisable upon careful inspection without delay, within eight work days after discovery of the defect. Complaints of defects that do not precisely designate the delivery and the items concerned are ineffective. In case of unjustified complaints that subsequently cause comprehensive examinations, the costs of the inspections can be charged to the purchaser.
- 9.2. The defective objects of delivery shall be kept ready for inspection by us in the state they are in at the time that the defect was discovered or returned to us at our discretion. Defective goods shall be reworked or replaced free-of-charge at our discretion within the warranty period set by law. The purchase price for the returned goods can instead be remunerated to the purchaser at our discretion. If rework or a substitute delivery fails, the purchaser is entitled to withdraw from the contract or to demand an appropriate reduction of the purchase price at its discretion.

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- 9.3. No liability is accepted for the goods if their defectiveness is due to the fact that they have been subject to premature wear as a result of natural wear and tear, defective or negligent treatment, excessive loading or unsuitable operating materials.
- 9.4. Goods sent to us for finishing, reprocessing or conversion, including such that originate from our workshops, we do not accept any liability for the behaviour of the material during hardening or processing. If the material becomes damaged during processing, we must be paid an appropriate part of the agreed remuneration for the work performed.
- 9.5. Warranty claims against us accrue solely to the direct buyer and cannot be assigned.

10. Product liability

- 10.1. In defending against claims under the aspect of product liability, the purchaser shall support us in every reasonable manner.
- 10.2. The purchaser shall inform us without delay of any cases of damage or other non-conformities connected with our products.

11. Restriction of liability

- 11.1. Claims for damages can only be pursued against us in case of malice aforethought, gross negligence or liability prescribed by law independent of culpability. These restrictions do not apply in case of violations of cardinal duties in line with the nature of the contract, if the restriction of liability threatens the achievement of the purpose of contract or if the distribution of risk in the contract would be severely hampered by the disclaimer of liability in the violation of auxiliary duties. They furthermore do not apply if the purchaser pursues claims for damages on the basis of non-fulfilment due to the lack of an assured characteristic. In case of fatalities, physical injuries or harm to health, our liability is governed by the provisions of law.
- 11.2. These restrictions of liability also apply to the personal liability of our staff, workers, employees, representatives and vicarious agents.

12. Contradictory conditions of purchase

The purchaser's conditions of purchase are not binding on us, regardless of whether such correspond to these terms or contradict them, even if the order is based on these conditions and we do not specifically contradict their content.

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13. Binding nature of the contract

Contracts between us and the purchaser remain binding (even at the date of conclusion of contract or if individual items in their provisions become unworkable or invalid at a later date), insofar as the workability of the remaining provisions/components of contract is not hindered by this.

14. Export restrictions, customs processing

- 14.1. If the goods delivered are subject to German, European and/or United States controls, the purchaser shall observe the relevant export regulations if the products are exported.
- 14.2. If deliveries are executed duty unpaid at the purchaser's request, the purchaser is liable to us for any subsequent claims by the customs administration.

15. Place of fulfilment and jurisdiction, applicable law

- 15.1. The place of fulfilment is Hilden.
- 15.2. The sole place of jurisdiction for merchants in all legal disputes arising directly or indirectly from the contractual relationship is Hilden. However, we are also entitled to pursue the purchaser at its general place of jurisdiction.
- 15.3. Insofar as the purchaser is a merchant, German law shall prevail over the legal relationships between ourselves and the purchaser including UN Commercial Law.