

TERMS AND CONDITIONS OF SALE, PAYMENT AND DELIVERY

LWB Steintl GmbH & Co. KG
referred to hereinafter as LWB

(version 09.2018)



STEINL MACHINERY

To be applied to any agreement with:

1. person acting in performance of her/his commercial or independent professional business (entrepreneur) when entering into any respective agreement
2. any public legal entity or any public separate estate. These terms and conditions of sale, payment and delivery shall apply to all future orders as well. Any incorporation of conditions to the contrary is hereby expressly objected to.

I. Offer, Items Included in Delivery

1. Any descriptive documents pertaining to any respective offer, such as pictures, drawings, and particulars as to weight and measures, shall only be deemed to be rough standards unless explicitly identified as binding standards under any respective agreement.
2. No order/purchase shall be deemed effective until it has been confirmed in writing by LWB. Until then, any documents relating to any offer by LWB shall be non-binding.
3. LWB hereby reserves to itself all of its property and copyright interests in any cost estimates, drawings and other descriptive documents.
4. Such descriptive documents pertaining to any respective offer shall not be made accessible to any third party. Plans marked confidential by LWB shall only be made accessible to any third party by the orderer after having obtained LWB's consent thereto unless the contracting parties have agreed otherwise in writing.
5. LWB's written acknowledgment of any respective order shall determine the content of any respective agreement and the scope of any performance due thereunder.
6. The parties have not entered into any ancillary agreements by word of mouth.
7. Any ancillary agreement and any modification of any respective agreement shall be subject to LWB's written acknowledgment thereof.

II. Prices and Payment

1. The prices are quoted EX WORKS (INCOTERMS 2010) and do not include packaging, freight, postal charges, and value insurance.
2. Prices are formed exclusive of value added tax.
3. WB has the right to adjust the prices for deliveries and services to any change of its cost situation unless the delivery or service is, unlike normally, performed within 4 months of the formation of the underlying agreement.
4. Any payment shall be made in euros without any deduction no later than 30 days of the invoice date.
5. The orderer shall be held to be in default if it fails to make payment upon a reminder given by LWB after its claim for payment has become due. Irrespective thereof, however, the orderer is held to be in default if any payment is not made at the payment time determined under the agreement either by reference to the calendar or by contractual stipulation. The legal provision under which,

subsequently to the expiration of 30 days following receipt of an invoice, any debtor is at the latest and automatically held to be in default, remains unaffected hereby. In any case of its default of payment, the orderer will be charged with default interest in the amount provably incurred, no less, however, than 8% above the basic interest rate of the European Central Bank (ECB), and without prejudice to the right to claim damages in excess of such amounts of interest.

6. The purchase price shall be payable immediately in case the orderer suspends making payments on any of its debts or if the orderer is insolvent.
7. The orderer is not entitled to set-off any counterclaim unless such claim is either uncontested or declared to be meritorious by a final and unappealable judicial decision.
8. Any payment shall be made to LWB's place of business net cash without any deduction and free of charges, and in accordance with the terms of the acknowledgment of any respective order unless the parties have agreed otherwise.
9. Partial invoicing of partial deliveries is permitted.
10. Any right to withhold payment may only be exercised if it is based on claims of the orderer arising from the same transaction between the parties and if it is either acknowledged as meritorious by LWB or declared to be meritorious by a final and unappealable judicial decision. If any order is canceled or delayed after LWB has commenced its performance, LWB shall have the right to charge Orderer the costs arisen thus far. In particular, this shall apply to any expenditure caused by engineering work as well as to any materials already ordered.

III. Retention of Title

1. LWB retains its property rights in the delivery item until having received all payments due under the business connection with the orderer. The property rights so retained shall cover the acknowledged balance due to LWB if LWB adds receivables from the orderer to an open account (current account reservation).
2. LWB is entitled to repossess the sold goods if the orderer commits a breach of contract, including without limitation default in any payment. Repossession of the sold goods by LWB includes a rescission of the contract. LWB may realize the repossessed goods; the proceeds from the realization of the goods shall be credited towards the debt owing from the orderer, minus reasonable costs of such a realization.
3. The orderer shall give LWB immediate written notice of any attachment or any other intervention by any third party and it shall make that third party aware of LWB's collateral security rights on the basis of this agreement, especially of those provided under item 1, item 4, item 7, and item 8. To the extent any such third party is not capable of reimbursing LWB for the court fees and out of court expenses for an action pursuant to ZPO section 771, the orderer shall be liable to compensate LWB for the loss incurred.

4. The orderer shall not assign or transfer any delivered item being covered by the expanded reservation of property rights as collateral. The orderer may resell the delivered item in the ordinary course of the orderer's business. With respect to any event of a resale, the orderer is now, already, assigning to LWB all receivables in the amount of the respective invoice total (including value added tax) accruing to it from any such resale against its customers or against third parties, and that shall apply regardless if the delivered item has been sold prior or subsequent to being processed. The orderer may even collect such receivables after they have been so assigned. LWB's right to collect such receivables itself shall remain unaffected hereof; LWB agrees, however, not to collect such receivables while the orderer duly meets its payment obligations to LWB and does not default any payment.
5. The orderer agrees to send LWB an inventory reflecting the assigned receivables and the debtors owing these receivables upon request. Additionally, the orderer shall provide all information required for collecting these receivables, surrender all pertaining documents to LWB and disclose the assignment to the debtors (third parties) if the orderer defaults on any payment.
6. The orderer shall treat the delivered item with care. The orderer shall at its own expense sufficiently insure the delivered item against damages caused by fire, water, and theft on the basis of its original value.
7. Any processing or transforming of the delivery item by the orderer shall always be deemed to be made on LWB's behalf. If any delivery item is processed jointly with other items not owned by LWB, then LWB shall acquire a joint ownership interest in any newly created item equivalent to the value of the respective delivered item in proportion to the value of those other jointly processed items at the time of such processing. The provisions governing delivered items title to which is retained upon delivery shall also govern items created through the processing process to the extent not covered the above provisions.
8. If any respective delivered item is inseparably attached or confused with other items not owned by LWB, then LWB shall acquire a joint ownership interest in any newly created item equivalent to the value of the delivered item in proportion to the value of those other attached or confused items at the time of such attachment or confusion. If such an attachment or confusion is performed thus that the orderer's item is to be treated as the principal item, then it shall be deemed agreed upon that the orderer transfers such a joint ownership interest in that item to LWB on a proportionate basis. The orderer shall keep the custody of the object of this joint or sole ownership interest on LWB's behalf.
9. The orderer shall not itself assign the receivables assigned pursuant to item 4 to any third party unless the assignment is made as part of a true factoring transaction the orderer priorly has given notice of to LWB and if the factoring proceeds exceed the value of the secured receivable(s). To the extent they are part of a true factoring transaction, LWB's receivables from the orderer shall become payable immediately as soon as the factoring proceeds are credited to the orderer's account.
10. Upon the orderer's request, LWB agrees to release any respective collateral LWB is entitled to to the extent that the value of such collateral exceeds the yet outstanding receivables to be secured by more than 10 %. LWB may choose the collateral to be released.
11. If the delivered item is abroad, the orderer agrees to take part in all measures and to contribute any declaration required for providing LWB with valuable and bankruptcy-proof securities in accordance with the expanded and extended retention of title pursuant to items cthrough 10

IV. Shipment, Delivery and Installation

1. Any shipment is performed at the orderer's expense and risk. Goods which got lost and/or damaged in transit will only be replaced by LWB on the basis of a new order against payment of the prices applicable from time to time.
2. LWB shall be notified in writing of any non-conformity with the delivery notice or invoice immediately after the goods have been received.
3. The orderer shall bear the risk of unloading and storing the unit.
4. Any waiting period occurring during installation and commissioning LWB is not responsible for may be charged to the orderer.
5. No overnight or weekend surcharges have been taken into account when fixing the price offered for an installation/ commissioning. Such surcharges will be charged additionally if the customer wishes any overnight work or weekend work to be performed during installation / commissioning.
6. In any case of installation and commissioning by LWB, the orderer shall make the required items and the required materials, hoisting devices, and other appliances, all required connections for energy and water as well as qualified auxiliary personnel for the mounting of LWB's product available at no charge.
7. Any machine/machinery shall be put in commission immediately after its installation. If this is not possible, LWB will charge the orderer any travel expenses additionally arisen thereby.
8. "Commissioning of the machine/machinery" shall be defined as starting it and simultaneously testing all of its functions. Neither breaking in the staff nor training the staff shall be included, however.
9. The orderer shall confirm to LWB the number of working hours performed by the personnel used for the installation on a regular basis (daily or weekly, depending on the duration of the assignment) and it shall also confirm the completion of the mounting, installation and/or commissioning without undue delay.
10. If the integration of any particular machine requires any change in the program control of any respective line, the cost of any such change shall be paid by the orderer.
11. In the event that the dispatch of any ordered item is delayed at the orderer's request, the orderer shall be charged the cost of its storage as of one month following LWB's notice of its readiness to dispatch the ordered item such charge of costs monthly amounting to at least .5 % of the invoiced amount if the ordered item is stored at LWB's premises. Following the fixing and fruitless expiration of a reasonable period of time, LWB may, however, dispose of

any respective ordered item otherwise and provide supply to the orderer under a reasonably extended time limit.

V. Time of Delivery

1. Time of delivery shall commence upon dispatch of the acknowledgment of any respective order, in no case, however, prior to the submission of all documents, licenses, and releases to be produced by the orderer, nor prior to receipt of any stipulated down payment.
2. Such a time limit for delivery shall be deemed to have been observed if, prior to its expiration, the ordered item has either left LWB's premises or notice of LWB's readiness for dispatch has been given.
3. Any time limit for delivery shall be adequately extended in any case of industrial action, particularly strike and lock out, and as well in any case of an occurrence of important unforeseeable impediments beyond LWB's will, provided that such impediments are proven to substantially affect the completion or shipping out of the ordered item. The same shall apply if sub-suppliers are affected by such circumstances.
4. Even if such industrial action, in particular a strike or a lock out, or an impediment beyond LWB's will, occurs while LWB is in default of delivering the ordered item and even if such impediments are proven to substantially affect the completion or the delivery of the ordered item, LWB shall not be held liable for any consequences thereof. BGB section 287 sentence 1 and sentence 2 shall be contracted out. In important cases, LWB will give the orderer immediate notice of any appearance and disappearance of such impediments.
5. Any term of delivery shall be suspended from running while the orderer does not fully perform its contractual duties, including without limitation the timely provision of testing materials.
6. Observance of the time limit for delivery requires the due performance of its contractual obligations by the orderer.

VI. Passing of Risk and Acceptance of Delivery

1. At the latest, the risk shall pass from LWB to the orderer when the respective ordered items are available for lading, or when notice of their readiness of lading is given pursuant to EX WORKS (INCOTERMS 2010).
2. Passing of the risk when the respective delivery items are available for lading or when notice of their readiness of lading is given shall even then be deemed agreed upon by the parties, when partial deliveries are made, or when LWB has agreed to perform additional services, such as installation and commissioning.
3. If the dispatch of any ordered item is delayed due to circumstances the orderer is responsible for, the risk shall already pass to the orderer on the day LWB is ready to dispatch the respective ordered item, provided, however, that LWB shall, upon the orderer's request and at the orderer's cost, obtain the insurance coverage the orderer demands.
4. The orderer shall accept the items delivered even if they show substantial defects, without prejudice, however, to any of its rights under section VIII hereof or under law.
5. Deliveries may be made by installments.

VII. Defective Delivery, Warranties

Notwithstanding the provisions under section X item 4, LWB's liability for defects of any respective delivered item, including but not limited to the absence of explicitly warranted qualities, shall be as follows and at the same time limited to the following:

1. Any and all items proving to be unfit for use or of only substantially reduced use within 1 year following their commissioning due to any circumstance given before the risk passed to the orderer, especially when due to faulty design, defective construction materials or faulty workmanship, shall at LWB's reasonable discretion either be repaired or replaced by a substitute item. LWB shall be given immediate written notice of any discovery of any such defect. Any replaced item shall become LWB's property.
2. LWB's liability shall expire if the shipment, the installation or the commissioning is delayed without LWB's fault. In any case, however, LWB's liability shall at the latest expire after a period of 12 months following the passing of the risk.
3. The period of limitation for all warranty claims (especially those pursuant to BGB § 438 subsection 1 item 3) is reduced to 1 year. The foregoing shall not apply in any case of intentional misrepresentation, malice and when BGB sections 478, 479 apply. The period of limitation commences at the time provided by the respective applicable statute.
4. The limitation period is not limited, however, if the delivered item has, according to its ordinary manner of use, been used for a structure and if the delivered item has caused the defectiveness of that structure (especially BGB section 438 subsection 1 item 2 and section 634a subsection 1 item 2).
5. Any delivery shall be deemed approved of if LWB has not received any notice of any obvious defect within 10 weekdays following arrival of that delivery at its place of destination.
6. Hidden defects shall be complained of in the same manner within 3 days following their discovery, no later, however, than 1 year after the risk has passed.
7. The period of limitation for defective delivery items shall be reduced to 6 months if multiple shift operations have been agreed upon in any agreement.
8. LWB's liability for third party products shall be contingent on a prior unsuccessful assertion of claims by the orderer against the supplier of any such third party product.
9. In any case of timely notice of a defect, the orderer's right to assert claims arising from defects shall expire after 6 months, no sooner, however, than upon the expiration of the warranty period.
10. There is no liability for damages to any delivery item due to any of the following events: Inappropriate or improper use, faulty installation or commissioning by the orderer or any third party, fair wear and tear, faulty treatment or negligent treatment, improper operating materials, improper substitute materials, faulty construction work,

unfit subsoil, chemical, electrochemical, electric and any like effects, provided that such circumstances are not caused by any fault of LWB's.

11. Upon entering into any agreement, the orderer shall be deemed to have waived any claim for compensation of damages sustained due to any ordinarily negligent act or omission by any employee of LWB's constituting a breach of any precontractual duty. This shall not apply to any injury to life, body, and / or health of any person.
12. The performance brought about by any of the machines will only be within the permissible tolerances if genuine materials are used. Upon LWB's request, the orderer shall make such genuine materials required for adjustment and testing available to LWB free of charge, and it shall specify the tolerances of those materials. LWB shall not be liable for any damage caused by the orderer's use of other materials than the genuine materials or by the orderer's use of genuine materials of other tolerances than the specified tolerances. LWB does neither accept any liability for returning a quantity of genuine materials that is less than the total of the quantity made available to LWB, nor does LWB accept any liability for any damage to or for any depreciation of such genuine materials.
13. Upon arrangement with LWB, the orderer shall allow LWB the time and opportunity needed for completing all repairs and replacements LWB will in its reasonable discretion consider necessary; otherwise, LWB is exempt from any liability for any consequence resulting from such repairs and replacements.
14. The orderer shall only have the right to cure any defect itself or to have any third party do so, and to claim reimbursement of the expenses necessary for such cure from LWB, in the event of either an urgent case of an operational safety hazard or of LWB's defaulting on its obligation of curing a defect and then only for the purpose of avoiding unreasonably extensive damages, provided that LWB is given immediate notice thereof.
15. Provided that the orderer's complaint proves to be meritorious, the share to be borne by LWB of the immediate cost arising from any repair, replacement and installation of spare parts performed under any warranty shall consist of the expenses for the respective spare part including the freight of its shipment, and the cost for any disassembly and assembly work, which the parties shall come to an agreement on before any disassembly or assembly work is performed. Any other costs and expenses shall be borne by the orderer.
16. Should the necessity arise that a mechanic of LWB's is made available, the cost hereof shall be borne by LWB to the extent to which this does not result in a burden to LWB which is unreasonable.
17. The warranty period for any spare part and any repair is three months; it will, however, not expire before the initial warranty period for the delivery item expires. The warranty period for any respective ordered item shall be extended by the time the business operations were interrupted due to any repair work.
18. There shall be no warranty liability for any defect of any expendable part coming up after the risk has passed and brought about by its use.

19. LWB shall be exempt from any warranty if the machine/ machinery is not mounted and/or started up by LWB's personnel – the parties agreeing that such mounting and starting up services shall be at the orderer's expense.

VIII. LWB's Liability, Exclusion of Claims for Damages

Unless otherwise provided under these Terms and Conditions, LWB shall only and exclusively be liable to the extent set out hereinafter:

1. LWB, its employees and its vicarious agents shall be exempt from liability for damages of any kind based on ordinary negligence unless provided otherwise under VIII. of these Terms and Conditions. This exemption from liability shall apply regardless if the damages are defined as based on breach of contract or on breach of secondary contractual duties, and regardless if they are defined as based on the breach of duties existing at the time when the agreement was entered into or as based on a tortious act. This exemption of liability shall also apply to any consequential damages and to any damages caused by delay. It shall be of no concern if the damage materializes in the delivered item or elsewhere.
2. In any case of a faulty breach of a substantial contractual duty, the liability for such breach shall also cover ordinary negligence, provided such ordinary negligence is committed by an executive body of LWB's or by any member thereof, or by an officer; such liability, however, being limited to such damages which are typical for the respective contract and which were reasonably foreseeable.
3. In any case of a permitted limitation of liability for ordinary negligence, the damages which are typical for any respective agreement, and which were reasonably foreseeable shall not exceed 5 % of the value of the quantity of any delivery affected by such ordinary negligence.
4. There is no limitation of any liability under the Produkthaftungsgesetz of the Federal Republic of Germany. The same shall apply whenever qualities are lacking that, by way of an exception, have been expressly warranted, provided such warranty has been given for the purpose of securing the orderer against such damages that have not arisen in the ordered item itself. Any liability resulting from injuries LWB is responsible for to life, body and / or health of any person shall be without limitation.

IX. Orderer's Rights of Rescission

1. The orderer may rescind the agreement if full performance by LWB becomes impossible before the risk passes. The same applies in any case of LWB's incapability to perform its obligations under the agreement. Section VIII items 2 and 3 shall apply if such impossibility / incapacity affects essential contractual duties. The orderer shall also have the right to rescind any respective agreement if performance of a delivery in fulfillment of an order of items of the same kind becomes impossible as to a part of its quantity, provided that the orderer has a meritorious interest in rejecting a part delivery; otherwise, the orderer shall have the right to reduce its counterperformance correspondingly.
2. The orderer shall have a right of rescission in any case of default of performance provided that the orderer fixes an additional period of time for the defaulting LWB to perform its duties connected with the explicit warning that it will refuse

to accept LWB's performance after the expiration of that additional period of time, and further provided that LWB fails to perform its duties within that additional period of time.

3. If LWB's performance becomes impossible while the orderer is in default of acceptance of delivery or if such impossibility is due to the orderer's fault, then the orderer shall remain liable to counterperform.
4. Moreover, the orderer shall have a right to rescind any respective agreement if, due to LWB's fault, any repair or replacement of any defect in terms of these Terms and Conditions of Delivery LWB is responsible for fails to be completed within such additional period of time reasonably fixed to LWB. The orderer shall also be entitled to rescission if such repair or replacement by LWB has become impossible or if LWB has become permanently incapable of providing such repair or replacement.

X. LWB's Right of Rescission

1. Any agreement shall be reasonably adjusted in any case of an unforeseeable event, provided that event materially changes the economic importance or the subject matter of the performance due under the respective agreement, or provided that event considerably affects LWB's business, and in any case in which performance of the agreement turns out to be impossible subsequently to the formation of the agreement.
 2. LWB may rescind the agreement in whole or in part if adjusting that agreement is economically unreasonable. The orderer is not entitled to collect any damages caused by such a rescission.
 3. LWB shall give the orderer notice of its intent to rescind any respective agreement immediately after having become aware of the consequences of any such event, and that shall even apply if an extension of any respective time for delivery was initially agreed upon between LWB and the orderer.
3. The place of jurisdiction, including summary draft enforcement proceedings, summary check enforcement proceedings and summary proceedings restricted to documentary evidence, shall be at the respective court of venue and subject matter jurisdiction over Altdorf without prejudice, however, to LWB's right to resort to the court of general jurisdiction over the place of the orderer's domicile.
 4. All legal relations between LWB and the orderer are exclusively governed by the laws of Germany. This shall apply to the formation and to the performance of any respective agreement as well.
 5. The ordered items are designed, manufactured and adjusted in accordance with the legal provisions applicable in the Federal Republic of Germany. If the orderer desires the ordered items to be adjusted according to provisions differing from the German legal provisions, it shall give LWB notice thereof upon placing the order or immediately thereafter. At the same time, it shall transmit such provisions differing from the German legal provisions to LWB either in German or in English. LWB reserves the right to reasonably adjust the price and delivery time to the extent required by such a desire of the orderer.
 6. It shall be any foreign orderer's duty to take any measures beyond the legal provisions in effect in the Federal Republic of Germany for the purpose of protecting the operating personnel and any other person against any chemical, biochemical, electrical, electromechanical, electroacoustic and similar effects caused by any respective machine/machinery.
 7. If any particular provision of these General Terms and Conditions is or becomes invalid, that invalidity does not affect the validity of the other provisions thereof. The parties to any agreement hereunder shall agree upon a new provision serving the purpose pursued by the provision having become invalid at best.

XI. Place of Performance, Place of Jurisdiction, Applicable Law, Other Terms and Conditions, Final Provisions

1. The requirement of a writing shall be met if any notice hereunder is made by fax or by email.
2. The place of performance of any respective delivery shall be at its respective place of dispatch, the place of performance of any respective payment shall be at 84032 Altdorf.