

**General Conditions of Purchase and Supply  
of AVERMANN MASCHINENFABRIK GMBH & CO. KG  
for supplies of machinery and replacement parts and services as well as  
assembly  
(Status: November 2018)**

**§ 1 Scope**

1. The present General Conditions of Purchase and Supply apply exclusively. We do not acknowledge conflicting provisions in customers' conditions, which deviate from these, unless we have expressly acknowledged their application in writing. Our General Conditions of Purchase also apply, if, in the knowledge of conflicting conditions or customers' conditions, which deviate from our conditions of purchase we unconditionally perform a delivery to a customer. The provisions of the German Civil Code, the German Commercial Code and Incoterms status 2010 also apply on a supplementary basis.
2. Our General Conditions of Purchase apply only to companies within the meaning of § 310 German Civil Code.
3. Our General Conditions of Purchase also apply in their current version as a framework agreement for all future transactions of the same type, without any requirement for us to refer to them fact again in every individual case; in this case we shall inform the customer of any amendments at the latest on conclusion of the respective contract.

**§ 2 Quotation, conclusion of the contract, prices**

1. Our quotations are without obligation and subject to confirmation, unless by way of exception an express intention to be bound arises from the quotation.
2. A contract does not come into existence until our confirmation of order, solely subject to the conditions confirmed in writing by us, has been issued. Similarly, this shall apply for orders sent to us in electronic form provided that a quotation with intention to be bound exists for our part and provided that the order does not deviate from our quotation.
3. Orders and other data, which are transferred to us, are deemed to have been received by us only with the content received by us. If we confirm receipt of the order, this confirmation of receipt records only the receipt of the order and does not represent any binding acceptance of the order. We may, however, combine the declaration of acceptance with the confirmation of receipt.
4. Discrepancies in the delivery item from confirmations of order, quotations, models, brochures, data sheets, test and pre-deliveries, which are customary in the trade, are admissible in accordance with the currently valid DIN/EN standards or other relevant technical standards.
5. In order to be valid, oral collateral agreements and guarantees require our written confirmation. This means, for example, that illustrations, diagrams, dimensions, weights and other delivery data are binding, only if we agree this expressly with the customer. The customer is obliged to notify us in writing prior to concluding the contract that in his opinion the products are not exclusively suitable for the customary use or the customer is proceeding from the specific suitability of the product or is planning to use the product for an unusual purpose, to process unusual materials, subject to increased wear or subject to risk to life, limb or health or to the environment.
6. Our prices are exclusive of statutory Value Added Tax for delivery ex works (Incoterms 2010) Lengericher Landstraße 35, 49078 Osnabrück,

Federal Republic of Germany. We are entitled to increase the agreed delivery price, if between the award of the contract and the delivery the costs for raw materials, energy, wages and salaries, freight charges, customs duties, other dues, etc. have increased and thereby added to the cost of the delivery. We shall notify the customer in advance of any increase in price; he may register an objection within seven days of the notification of the price increase. In the case of objection, we have the option of withdrawing from the contract or delivering at the price originally agreed. We are bound to notify the customer without delay of our decision. If we declare withdrawal from the contract, all other claims by the customer are excluded.

7. We expressly refuse any cash discount deduction not previously agreed.

**§ 3 Subsequent amendments**

The parties shall establish and confirm in writing all additional services agreed subsequently to confirmation of the order. In cases in which we perform services, for which no fixed price has been agreed, we shall determine the price in application of our standard invoicing rates applicable on the date of performance of the services. We may further invoice all incidental costs, including a reasonable surcharge. On request we shall detail the surcharge.

**§ 4 Payment conditions**

1. Unless otherwise provided in the confirmation of order, the terms of payment are 14 days net. Any cash discount deduction agreed on new invoices is inadmissible, unless older invoices due for payment have been settled. The payment date is deemed to be the date, on which we can dispose of the receipt of the money in terms of value. If deposits or advance payments have been agreed, the deposit or advance payment is also subject to statutory Value Added Tax.
2. Payments may be made only by bank transfer or through the SEPA direct debit scheme. We accept bills of exchange, cheques and other negotiable instruments only on account of payment and subsequent to prior written agreement. The customer must reimburse without delay all costs related to receipt (e.g. redemption of discount charges). The term of bills of exchange is restricted to 90 days from date of invoice.
3. The parties to the contract may agree that the customer must open a documentary letter of credit through his bank (or through any [other] bank acceptable to us). In this case it is specified that the documentary letter of credit must be opened in conformity with the Uniform Customs and Practice for Documentary Credits, 2007 edition, ICC Publication No. 600 ("ERA").
4. Rights of offset and retention are available to the customer only if his counter-claims are legally enforceable, undisputed or acknowledged by us or if consideration resulting from the contractual relationship is affected, in particular in the case of a counter-claim, which has emerged from a claim to payment in kind giving entitlement to refusal of performance. In exercising a right of retention the participant is entitled only to the extent that his counter-claim relies on the same contractual relationship.
5. The customer must pay for admissible partial performance of services within the periods in the conditions of payment and, failing such, within the periods specified in the confirmation of order.

**§ 5 Delivery – performance – scope of delivery**

1. In order to be valid, binding delivery deadlines or periods require our written confirmation. Compliance with all our delivery and performance

obligations presupposes the customer's timely and proper performance of his obligations and the clarification of all technical issues. The delivery period is complied with, if the delivery item has left our works by its expiry.

2. Unless otherwise agreed, our products and commodities are delivered ex works (Incoterms 2010) at Lengericher Landstraße 35, 49078 Osnabrück, Federal Republic of Germany, even when we deliver carriage paid.

3. The customer shall bear the cost of the packaging of our products and commodities. Goods are despatched by the most cost-effective despatch route at the risk and costs of the customer. Risk always passes to the customer with effect from the place of loading of the works and this includes when partial deliveries are performed or we have undertaken other services (ex works, Incoterms 2010) If the customer requires, we shall cover the delivery by a transport insurance. The costs incurred in this respect shall be borne by the customer.

4. Partial deliveries are admissible, if they are reasonable in an individual case for the customer. This means specifically, if

- the partial delivery is appropriate for the customer within the intended purpose under the contract,
- the delivery of the remaining delivery item ordered is guaranteed within the delivery period agreed under the contract and
- the customer does not incur any substantial extra expenditure or additional costs (unless we have declared that we are prepared to accept these costs).

5. Objects of the contract arising from services in correct and proper form can be returned only if we authorise their return. In this case the customer must bear the costs of returning the goods.

6. We are released from our duty to deliver and perform by force majeure, governmental requirements and other circumstances, which are not attributable to us, in particular traffic disruptions and interruptions to operations, industrial action, shortage of materials, fire damage, war or states of emergency. We are entitled to withdraw from the contract, if by virtue of any of the foregoing grounds it is no longer reasonable for us to fulfil the contract. Unreasonableness does not exist, if the obstacle to performance, which exists on the foregoing grounds, is anticipated to be only of a temporary nature. In these cases claims to compensation in damages against us are excluded.

7. We accept liability both in the cases of impossibility and of delay in performance, insofar as this relies on culpable intent or gross negligence, including culpable intent or gross negligence of our representatives or vicarious agents, in accordance with the statutory provisions. However, our liability in case of gross negligence is restricted to foreseeable damage, typical to the contract.

7.1 In the case of slight negligence, our liability by virtue of the impossibility of compensation in damages and compensation for unnecessary expenses is similarly restricted to foreseeable damage, typical to the contract. More extensive claims by the customer due to impossibility of performance are excluded. The right of the customer to withdraw from the contract remains unaffected.

7.2 Our liability for delay in performance is restricted to a total of 5% for compensation in damages together with performance and to a total of 5% of the value of the performance for compensation in damages in place of performance.

More extensive claims by the customer due to delay in performance are excluded, including on the expiry of a period of grace set by us for performance. These provisions also apply to compensation for unnecessary expenses.

7.3 The restriction to § 5.7 do not apply to liability for injury to life, limb or health or by virtue of breach of material contractual duties. Material contractual duties are those, which are central to the performance of the contract and on which the customer may rely. No amendment of the burden of proof to the detriment of the customer is included in the foregoing provisions.

## **§ 6 Reservation of timely and correct supply of incoming goods**

We do not accept the procurement risk. If, despite the conclusion of an appropriate purchase agreement, for our part we do not obtain the delivery item in full or do not obtain material parts of the delivery item in full, we are entitled to withdraw from the contract with the customer. Our liability for culpable intent and gross negligence remains unaffected. We shall notify the customer of the non-availability or of the untimely

availability of the delivery item without delay and, if we wish to withdraw, shall exercise the right of withdrawal without delay. In the case of withdrawal we shall immediately refund any consideration already paid by the customer.

## **§ 7 Due date – interest – consequences of default**

1. In the case of payment subsequent to the expiry of the payment term of 14 days interest on arrears shall be payable to us in the amount provided by law. More extensive claims for compensation in damages remain thereby unaffected.

2. For as long as the customer is in arrears of payment, we shall not be obliged to make further deliveries, irrespective of the legal ground on which our duty to deliver is based.

3. If it becomes evident after conclusion of the contract (e.g. by an application for the opening of insolvency proceedings) that our claim to payment is jeopardised by the customer's inability to pay,

- we are entitled in accordance with the statutory provisions to refuse performance and, where applicable having set a period of grace, to withdraw from the contract (§ 321 German Civil Code);
- in the case of contracts on the manufacture of untenable items (custom-made items) we may immediately declare withdrawal;
- we are entitled to perform outstanding services only on a delivery-versus-payment basis against an advance payment or a surety and to withdraw from the contract on the fruitless expiry of a reasonable period of grace for the provision of the advance payment or surety.

The statutory provisions on the dispensability of setting a period of grace remain unaffected.

4. For the case that the customer agrees with us to pay by instalments or by payments on account, the following shall apply: if the customer falls in whole or in part into arrears with the payment of an instalment or a payment on account for a period longer than three days, the amount, which remains outstanding, shall be immediately payable in full in one total amount.

5. If the customer is in default of acceptance on the due date for payment, he is obliged nonetheless to pay the purchase price. In these cases we shall undertake the storage of the delivery item at the risk and costs of the customer.

6. If a surety for payment of the purchase price has been provided by a bank or other third party and in this respect our service cannot be performed by virtue of circumstances beyond our control, we are furthermore entitled to demand from the bank or another third party the remaining outstanding purchase price against the submission of proof that the delivery item has been delivered. Such storage is undertaken at the costs and risk of the customer. The storage date is deemed by us to be the delivery date. All delivery documents and other documents, which must be surrendered by us, in order to obtain the payment from a bank or another third party, must be handed over to us by the issuer of these documents.

## **§ 8 Retention of title**

1. We retain title to the delivery item until the satisfaction in full of all of the claims against the customer arising from the business relationship. In the case of breach of the contract by the customer, in particular in the case of arrears of payment, we are entitled to withdraw from the contract subsequent to the unsuccessful expiry of a reasonable period of grace. Subsequent to any withdrawal from the contract we have the right to demand restitution of the delivery item and otherwise to sell or dispose of the delivery item.

2. The customer is obliged to handle the delivery item with care; in particular he is obliged to provide adequate insurance cover for the delivery item at his costs against fire and water damage at the new value. If maintenance and inspection work is necessary on it, the customer must undertake this at his costs.

3. Despite the retention of title the customer is entitled to sell on the delivery item in the normal course of business, provided that he is not in arrears of payment. The customer is not entitled to any disposal of the goods subject to the retention of title other than resale in the normal course of business, in particular to any transfer by way of security or pledging. The principal's claim for payment against his purchaser arising from a resale of the goods subject to the retention of title and those claims

(in particular claims in tort and claims to insurance benefits) of the principal with respect to the delivery item, which arise from any other legal ground against his purchaser or any third party, including all balance claims arising from a current account the customer already assigned to us to the full extent for security reasons. We accept this assignment. The principal may collect these claims, which have been assigned to us on his invoice in his name, provided that we do not revoke this authorisation. Our right to collect these claims ourselves is not affected thereby; however, we shall not assert these claims ourselves and shall not revoke the authorisations, for as long as the principal complies with his payment obligations in correct and proper form. If, however, the principal behaves contrary to the contract - in particular if he falls into arrears with the payment of a claim for payment - we are entitled to demand from the principal that the latter notifies us of the assigned debts and the respective debtors, that he notifies the respective debtors of the assignment and surrenders to us all the documents and all data, which we need to assert the claims.

4. In the case of pledges or other intervention by third parties the customer must notify us without delay in writing, so that we can bring a legal action pursuant to § 771 German Code of Civil Procedure. Insofar as the third party is not able to reimburse to us the judicial and extra-judicial costs of an action pursuant to § 771 German Code of Civil Procedure, the customer shall be liable for the financial loss incurred by us.

5. The processing or alteration of the delivery item by the customer is always undertaken for us. If the goods are processed with other objects, which are not our property, we acquire joint ownership in the new item in proportion to the value of the goods supplied to the other processed objects at the time of the processing (final amount invoiced including Value Added Tax). Otherwise, the same shall apply to the processing of items arising from the processing as to the delivery item delivered with retention of title.

6. If the goods are processed with other objects, which are not our property, we acquire joint ownership in the new item in proportion to the value of the goods supplied to the other processed objects on the date of the processing (final amount invoiced including Value Added Tax). If the goods are combined or mixed in such a way that the customer's item can be regarded as the main item, it shall be deemed to have been agreed that the customer assigns joint ownership to us pro rata. The customer shall keep safe for us the sole or joint ownership thus generated.

7. The customer also assigns to us the claims to the security of our claims against him, which have arisen against a third party by virtue of the combining of the delivery item with a plot of real estate.

8. We undertake to release the securities to which we are entitled upon request of the customer insofar as the realisable value of our securities exceeds the claims to be secured by more than 10%. The option of which securities shall be released lies with us.

## **§ 9 Acceptance**

Machinery and products manufactured for the customer must be formally accepted by the latter on appropriate notification within a week as fully functional and efficient in the manufacturer's works. The acceptance, which must be signed for in writing, is the prerequisite for the delivery of the delivery item to the customer / to the customer's works, insofar as owed. With the acceptance declared in this way the customer declares that the delivery item shows the function and efficiency promised. If the acceptance is declared in this way after installation and commissioning at the agreed location the customer is barred from the plea of lack of efficiency or lack of functional capacity and we are then liable only for commissioning.

## **§ 10 Liability for defects**

1. The customer may not claim for defects unless the latter has complied with his responsibility to inspect and notify defects in a correct and proper manner in accordance with § 377 German Commercial Code.

2. We issue no warranties for special items, e.g. used machines.

3. Illustrations, weights, dimensions, terms of reference, yields and other documents included in the quotation, such as plans, diagrams, technical data, etc. are not statements of the nature of the product. They are solely to be regarded as indications. Warranted characteristics and guarantees are expressly not incorporated therein without separate written agreement. We also reserve modifications of the structure, the choice of

materials, the specification and design subsequent to despatch of the confirmation of order, if these modifications are either required for technical reasons and do not affect the customer adversely or on the procurement side we have to reckon on delays, increases in cost etc., which would not be reasonable, so that we are entitled to process other equivalent material. The modifications must be reasonable for the customer. The same shall apply to models already produced or made available.

4. Insofar as there is a defect in the delivery item, which is attributable to us, we are entitled at our discretion to supplementary performance in the form of removal of the defect or manufacture of a new product or the delivery of a new item, free of defects. In the case of removal of defects we are obliged to bear all the expenses required for the purpose of removing the defect, in particular transport, road, labour and material costs, provided that these costs are not increased by delivery of the delivery item to a location other than the place of performance.

5. If third parties, irrespective of whether they stand in a legal relationship with the customer, are jointly responsible with us for any defect or damage incurred by the customer, and if the customer exercises his claims arising from his legal position solely with us, he assigns to us as of today's date his claims against these third parties.

6. If the supplementary performance is not successful, which may be assumed at the earliest subsequent to the second attempt to provide subsequent performance or subsequent delivery, the customer is entitled at his discretion to demand withdrawal from the contract or reduction in the price. Unless otherwise stated in the following (§§ 10.7, 10.8 and 10.9), further claims of the customer, regardless of the legal grounds, are excluded. Therefore, we do not accept liability for damage, which has not arisen to the delivery item itself; in particular we do not accept liability for loss of production, interruption of business, the costs of any product recalls, lost profit or other financial losses of the customer. We also do not accept liability for damage, which arises by virtue of improper or inappropriate use, for incorrect handling by the customer or a third party, natural wear, negligent handling or inappropriate cleaning.

7. We accept liability in accordance with the statutory provisions, if the customer asserts claims for compensation in damages, which rely on culpable intent or gross negligence by our representatives or vicarious agents. Insofar as no intentional breach of contract is attributed to us, the liability for compensation in damages, however, is limited to foreseeable, typically occurring damage.

8. We accept liability in accordance with the statutory provisions, if we have culpably breached a material contractual duty. Material contractual duties are those, which are central to the performance of the contract and on which the customer may rely. In this case, the liability for compensation in damages, however, is restricted to foreseeable, typically occurring damage.

9. Liability for damages arising from injury to life, limb or health remains unaffected; this applies also to the mandatory liability in accordance with the Product Liability Act.

## **§ 11 Statute of limitations**

Claims of the customer against us, irrespective of the legal basis, become subject to the statute of limitations on the expiry of one year from their emergence. This shall not apply in the cases under §§ 438 (1) (2) and 634a (1) (2) German Civil Code. Similarly, this shall not apply in the case of culpable intent or fraudulent concealment of a defect or insofar as a warranty has been undertaken. Furthermore, the statute of limitations for claims for compensation in damages shall not apply in cases of injury to life, limb or health or freedom, in the case of claims under the Product Liability Act and in the case of a grossly negligent breach of duty or the breach of material contractual duties. Material contractual duties are those, which are central to the performance of the contract and on which the customer may rely. No amendment of the burden of proof to the detriment of the customer is included in the foregoing provisions.

## **§ 12 Assembly, commissioning, maintenance and services**

1. Unless otherwise agreed, the customer shall install and assemble the delivery item at his risk.

2. For the case that we have undertaken the installation and assembly under the contract the following applies:

The customer must at his costs provide technical support and technical equipment for unloading and installing the delivery items, including

cranes and fork-lift trucks. In addition the customer shall ensure in good time and at his costs that all tools, qualified employees, oil, lubricants, water, steam, oxygen, electricity, air, diagrams and data, raw materials and other items necessary for the assembly and commissioning are provided and that preparatory work and services are carried out. This includes in particular

- a suitable work and storage space as close as possible to the site, on which the commissioning work is to be undertaken;
- placing the plant in the installation area, which should be in an adequate condition, in order to begin assembly;
- all the necessary construction works, in particular as concerns the underfloor, the cabling, lines, anchor bolts, floor gutters, structure, gratings, cover panels and girders for supporting the lines;
- delivery, installation and connection to all the necessary cabling, other than cabling within the device, including mains power cables, data cables, control and signal cables etc. from the main operating panels and control centre to and between the connection points on the systems in accordance with our circuit diagrams, including electrically shielded cable ducts or cable ties for mains power cables and cables in accordance with our specifications;
- standard IT hardware and software as scheduled, (if not included in the price quotation);
- placing of the main servers (if available) in a clean, dry, air-conditioned room with adequate telephone and data line connections to our supervisory staff and online service;
- all import, work and other authorisations required to comply with assembly regulations abroad.

3. The customer shall ensure that our employees can carry out their work safely without risk to their health.

4. The customer must at his costs and in accordance with the agreements under the contract prepare the installation area for assembly and must ensure that the necessary power connections and technical equipment are available. The installation site for the machine must be freely accessible, where applicable an indoor crane must be available or the hall floor must be capable of bearing the load of a HGV or mobile crane. In the area where the machine is to be installed, the floor must have been cleaned. The customer is solely responsible for the statics. Prior to the start of the assembly work the customer must provide us with all the necessary information on the site and the availability of power connections e.g. electricity, gas and water pipes, etc. This applies in particular to concealed subsurface facilities. We do not accept liability for damage, which occurs solely because the customer has not complied with his obligations as set out above.

5. Assembly conditions, which must be agreed separately, apply to the services of our fitters and to the persons employed to assist the assembly foremen. For the case that the parties have not agreed any separate assembly conditions, the following shall apply:

For the services of the fitters we charge the respective de facto hourly rates (where applicable including overtime, week-end, public holiday and night working surcharges). The standard scale of charges applies to Sunday and public holiday working. Overnight accommodation costs, daily subsistence and disturbance allowances are invoiced separately according to expenditure. For journeys to and from the site mileage at the current rates is charged. The mileage is invoiced from 49078 Osnabrück, Federal Republic of Germany. Special journeys by the fitters, for example to procure replacement parts, etc., are similarly included in the invoice insofar as these are necessary and have not become evident until work had been commenced on the assembly or installation. The prices are exclusive of statutory Value Added Tax.

6. All additional parts required during the assembly and/or installation, which are not expressly listed and which are required for the commissioning by virtue of exceptional, unforeseeable local factors or by reason of a special requirement of the customer or by reason of the local supervisory authority, are invoiced separately against proof of expenditure.

7. Interruptions of the assembly and/or installation by reason of missing connections, structures, power outage, etc., which cannot be attributed to us, are borne by the customer, unless these interruptions are not attributable to the customer.

8. Additional work, not included in the scope of performance agreed under the contract, is invoiced according to expenditure. This must be agreed between us and the customer. Dead time during our presence or the travel of further fitters for the purposes of commissioning the machine shall be borne by the customer, unless, the dead time relies on a circumstance beyond the control of the customer.

9. Any agreed flat-rate charges for the assembly and/or installation do not include working on Sundays and public holidays; flat-rate charges apply only if all the preparation measures have been concluded on the site.

10. Costs for assistance for our technicians (electricians, support staff and suitable lifting equipment) during the duration of the performance of the commissioned work are borne by the customer, insofar this is necessary. The customer is entitled to prove to us that the assistance for performance of the contract was not required.

11. All the machines are supplied with the instruction manual provided by the respective manufacturer. Costs for personal familiarisation training are not included in the purchase price and are invoiced in accordance with the time spent.

12. The customer must confirm to us in the Assembly Report the correct performance of the work specified in the contract. The customer retains a copy for his records.

13. Unless otherwise agreed in the contract, we do not accept liability for:

- interfaces between our plant and/or our software on the one hand and on the other elements, which are provided by the customer or third parties;
- compatibility with other software of the customer;
- coordination between our work and that of other suppliers.

14. Maintenance work shall be undertaken by us only to the extent specified in the contract or in a specific service contract.

15. If the customer accepts services, in particular the assembly, installation and commissioning, we are indemnified and held harmless from any liability whatsoever. In particular we are not liable for defective performance by the customer, which does not comply with our recommendations, diagrams and specifications. In addition, our employees do not check whether all their instructions have been carried out correctly by the customer.

16. Prior to the start of the installation of a machine the supply parts must be in situ. Construction works and other preparatory work must be completed to the extent that the installation can be immediately commenced on the arrival of the fitters and can be continued without interruption. The customer shall ensure that the foundation required for the specific character of the machine to be installed (concrete levelled with a spirit level) is of sufficient load capacity. It is the customer's responsibility to undertake any measures for sound-proofing the body of the machine.

#### **§ 13 Governmental provisions — safety — use**

1. For individual parts of the machinery we have taken into account Machinery Directive 2006/42/EC, the Directive on Electromagnetic Compatibility 2014/30/EU and the Low Voltage Directive 2014/35/2014. On acceptance of the operation of our machines we can comply with the directives referred to, however, only under the pre-condition that the customer has installed safety equipment, which falls into his sphere of responsibility under the contract. However, we do not guarantee that the machinery always satisfies all the provisions on safety and safety at work applicable in site and other local regulations, unless this has been expressly agreed in writing in the contract. If an inspection of the machinery by the local (supervisory) authorities is required prior to commissioning, this falls similarly into the customer's sphere of responsibility.

2. The products have been designed solely for the use which is specified expressly in the contract and in our manuals. We accept no liability for any other use of the products, even where this is known to us.

3. In this respect the customer indemnifies and holds us harmless with regard to all claims by his employees, representatives or third parties by reason of personal injury or damage to property, which is caused directly or indirectly by non-compliance with our safety, operating and/or servicing instruction by the customer, his employees, representatives or other third parties. This indemnity encompasses all costs incurred by us including lawyers' fees and expenses incurred by us.

#### **§ 14 Supplementary conditions for software**

1. We surrender to the customer the rights of use of the software to be assigned and in other work results protected by copyright within the scope of the purpose envisaged in the contract. Unless otherwise agreed, we also grant to the customer a non-exclusive right of use (a licence) during the lifetime or contractual term or in other ways temporary use of the installation of this software into a database and for the use of this software as embedded software or application software, depending on the use specified in the contract. The customer is not entitled to assign in whole or in part the rights of use granted to him to third parties or to grant equivalent rights of use to third parties. We reserve the right to terminate this licence, if the provisions of the licence are breached or the customer breaches the provisions of the underlying contract in any other way.

2. Insofar as the rights of use have been assigned only for a limited time or the assignment of the licence ends on other grounds, all the rights assigned revert to us on the expiry of the licence without further legal transactions. The customer is obliged to erase all the licence products available to him and to return the documentation.

3. The assignment of the source codes to the customer is excluded, unless otherwise expressly agreed.

4. Insofar as we draw on the services and work results and in particular the rights of use of third parties to perform the contract, we shall acquire those rights of use to the extent necessary for the performance of the contract and shall assign these to the customer. If we are unable to acquire the rights of use to this extent or if there exist restrictions on the rights of use or other rights of third parties, we shall notify the customer thereof. The customer must comply with these restrictions. We are not obliged to secure the rights of use for services and works available to the customer.

5. The customer is entitled to produce one copy of the software solely for security purposes, which must be labelled as a copy and provided with a notice indicating that we are the copyright holder.

6. The customer must not remove any copyright markings.

7. The customer hereby undertakes not to modify, decompile, re-engineer or copy the software, except as expressly authorised in these General Terms and Conditions of Sale.

8. A separate maintenance or service and support agreement is required for the provision of maintenance and servicing measures.

9. We shall not assign to the customer the rights of use required to the use of our products to the extent specified in the foregoing until settlement of all the claims to remuneration, fees and reimbursement of costs concerning the contract.

10. In the case of loss of data, we accept liability only for that expense, which is required in the case of correct and proper data security by the customer for the reinstatement of the data. In the case of slight negligence, we accept liability only if the customer has undertaken proper and correct data security immediately prior to the measure leading to the loss of data.

11. Our liability and warranty are excluded, insofar as losses and/or malfunctions are caused by the fact that the customer culpably breaches provisions of this contract, modifies the software supplied in breach of the provisions of the contract or modifies our notices or does not use the software supplied by us in the systems environment agreed under the contract.

12. If we are obliged to deliver and assign items of software or to produce other works, such as expert assessments and analyses, the provisions of § 10 shall apply accordingly in other respects to the defective delivery and performance.

13. The limitations of liability apply accordingly for the personal recourse of our employees, representatives and vicarious agents.

#### **§ 15 Rights in intellectual property and industrial property rights — non-disclosure**

1. All intellectual property and industrial property rights concerning the products, quotations, designs, diagrams and other documents, such as patents, utility patents, copyright and trademark rights remain with us. The customer undertakes not to assert any rights in the intellectual property and industrial property in the products and in modifications of the products.

2. We declare to the best of our knowledge and belief that the machines, plant and replacement parts supplied on the date of signature of the contract do not breach any rights applicable in the Federal Republic of Germany in the intellectual property or industrial property of third parties.

Should the delivery items nonetheless breach such rights in the intellectual and/or industrial property on the date of signature of the contract, we may at our discretion:

- obtain for the customer the right to continued use of the delivery item,
- modify the delivery item in such a way that the infringement of rights no longer exists,
- replace the delivery item, so that rights are no longer infringed or
- withdraw from the contract or part thereof and reimburse the purchase price paid by the customer (minus a reasonable sum for any depreciation in value, which may have occurred,) with regard to the part of the delivery item, which breaches rights. In this case the delivery items must be concurrently returned to us.

3. Any further liability of our company by reason of the infringement of rights in the intellectual property or of the industrial property rights of third parties is excluded, except in the case of gross negligence or culpable intent. On no account shall we accept liability towards third parties for claims based on the infringement of rights in the intellectual property and/or industrial property rights, if the claims are related to illustrations, diagrams, catalogues, specifications or other materials, which have been supplied to us by the customer or on his behalf.

4. Subject to the existing limitations of liability we shall defend the customer against any claims, which are derived from a breach of an industrial property right, copyright and other property rights by the use in conformity with the contract of our products and shall assume costs and contributions to compensation in damages imposed on the customer, provided that he has notified us about such claims in writing and without delay and that all legal defence and settlement negotiations remain reserved to us.

5. All the information and documents delivered by us to the customer remain our property and may not be copied by the customer or disclosed to third parties and may be used only for the purposes agreed. At our request the customer must return to us the diagrams and other documents related to quotations.

6. If we have delivered items in accordance with diagrams, models, designs or other documents provided to us by the customer, the latter accepts the risk of infringement of third party intellectual property rights. If third parties rely on intellectual property rights to prohibit us in particular from manufacturing and delivering items of this kind, we shall be entitled, without being obliged to check the legal situation, to cease all further activity in this respect and in the case that the fault lies with the customer, to demand compensation in damages. Furthermore, the customer undertakes to indemnify and hold us harmless from all claims of third parties related thereto.

#### **§ 16 Exclusion of further liability**

1. Irrespective of the legal nature of the claim asserted, any liability for compensation in damages more extensive than that specified in detail in the foregoing conditions is excluded. This shall apply in particular to claims for compensation in damages arising from default in the conclusion of the contract, by reason of other breaches of duty or by reason of claims in tort for compensation for damage to property pursuant to § 823 German Civil Code. In the case of a claim for compensation in damages arising from default in the conclusion of the contract the disclaimer specified in the foregoing as consequence of a claim, which has already arisen on conclusion of the contract shall equate to a subsequent waiver of liability. Furthermore, we do not accept liability, if the customer has recourse to the industrial property right arising from the provisions.

2. The restriction in accordance with § 16.1 applies also insofar as the customer in place of a claim arising from compensation for the loss demands compensation for useless expenditure instead of performance.

3. Insofar as the liability for compensation in damages towards us is excluded or limited, this shall also apply with respect to the personal liability for compensation in damages of our managers and employees, employee representatives and vicarious agents.

#### **§ 17 Data use**

The data transferred by you is stored for the purpose of contract performance. All data is treated confidentially in accordance with the provisions of law (e.g. General Data Protection Regulation [GDPR] ("Datenschutz-Grundverordnung"), German Telemedia Act

("Telemediengesetz"), German Federal Data Protection Act ("Bundesdatenschutzgesetz").

1. We store the data transferred by you for the purpose of performing the contract, e.g. for shippers.

2. You consent to the collection, storage and processing of your personal data by us for the purpose of managing customer relationships in accordance with the German Federal Data Protection Act, German Telemedia Act and the General Data Protection Regulation.

3. The legal basis for the processing is Article 6 (1) sentence 1 letters a), b) and f) of the General Data Protection Regulation.

4. The data processing always takes account of your legitimate interests pursuant to the statutory provisions.

5. The data is stored for the duration of the business contact between us and you, which includes dispatch of the newsletter and, where appropriate, it is stored in accordance with the principles of the proper keeping and retention of accounts, records and documents in electronic form and for data access (GoBD).

6. You have the right:

6.1 at any time to withdraw any consent that you have granted to us. As a result of this, we will in future no longer be permitted to carry out the data processing based on that consent;

6.2 free of charge to request information about your personal data processed by us;

6.3 free of charge to request the immediate rectification of your personal data stored by us if it is incorrect or incomplete;

6.4 pursuant to the statutory provisions, to request the erasure, or the restriction of processing, of your personal data stored by us;

6.5 to request that you be provided with your personal data (which you have provided to us) in a structured, customary and machine-readable format or that this data be sent to another responsible person / entity, and

6.6 to lodge a complaint with a supervisory authority pursuant to Art. 77 GDPR.

7. The entity responsible for the collection, storage and processing of personal data is:

AVERMANN MASCHINENFABRIK GmbH & Co. KG, represented by Avermann Maschinenfabrik Verwaltungsgesellschaft mbH, in turn represented by Bernhard Thünemann and Dr. Maike Keller, Lengericher Landstraße 35, 49078 Osnabrück, telephone: +49 5405 505-0, e-mail: info@avermann.de.

8. Our data protection officer can be contacted at datenschutz@avermann.de or by post at the address given under 7. above plus "Data protection officer".

9. Parts of the privacy statement are not binding if they breach the General Data Protection Regulation.

10. Performance of the contract is not dependent on the consent to process personal data that is not needed for performance of the contract.

11. The customer has the right to withdraw their consent at any time. The consent can be withdrawn in the form in which the customer granted the consent. Withdrawal of consent does not affect the lawfulness of the processing that has taken place on the basis of the consent before its withdrawal.

## **§ 18 Place of performance – Court of jurisdiction – choice of law**

1. The place of performance and payment for all obligations arising from the business relationship is 49078 Osnabrück, Federal Republic of Germany.

2. Sole Court of jurisdiction for both parties is 49078 Osnabrück, if the customer is a merchant, a legal entity under public law or a special fund under public law. We have the right to bring a legal action at the court competent for the customer or at any other court, which may be competent in accordance with national or international law.

3. The customer is not permitted to assign any guarantees or warranty rights, licences or other rights, which have been granted to him in the context of the contractual relationship with us, unless we have given our agreement in writing to an assignment.

4. The German law is the solely applicable law. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.