

## Terms & Conditions - Max Machinery Equipment

### Article 1 — Scope

- A. These general terms and conditions shall apply to all offers, quotations and agreements of the Seiler: **'Max Machinery Equipment'**, with its registered office in **Steenwijk**, listed with the Chamber of Commerce under number **05076488**. The parties will only be allowed to agree on different terms and conditions in writing.
- B. General terms and conditions of the Buyer are expressly rejected by the Seller and shall only apply insofar as they are in accordance with these general terms and conditions.

### Article 2 — Offers and agreements

- A. Any offers made by the Seller in whatever form are without obligation.
- B. Statements and specifications of the Seller in respect of size, capacity, performance or results, appearing in pictures, drawings, catalogues, official lists, advertising material, websites etc. are provided roughly and do not bind the Seller.
- C. Upon or after the conclusion of the agreement, before performing, the Seller is entitled to require security from the Buyer for the fulfilment of his payment obligations.

### Article 3 — Price

- A. The offered and/or agreed prices respectively are exclusive of costs of transport and insurance.
- B. As long as the delivery of the goods has not taken place, the Seller reserves the right to charge price-increasing factors on to the Buyer, even if the price increase could be foreseen at the moment of offering and/or confirmation. All this with due observance of the legal provisions applicable in this matter.
- C. As long as the delivery of the goods has not taken place, price increases due to fluctuations and changes in the rate of exchange between the euro and other currencies in which any payment relating to the delivery must be made shall be borne by the Buyer.
- D. The price shall only apply to the goods and/or services specified in the agreement. Any goods delivered in addition to that shall be charged separately.

### Article 4 — Delivery and risk

- A. The term of delivery shall only commence after the Seller has received all data required for the delivery.
- B. The specified term of delivery shall never be considered a firm date, unless expressly agreed on otherwise.
- C. If intermediate changes are made to the agreement or if the execution of the agreement is delayed due to circumstances imputable to the Buyer, the term of delivery may be extended by the duration of this delay.
- D. Place of delivery shall be the warehouse specified by the Seller.
- E. From the moment of delivery, the goods shall be at the risk of the Buyer. The Buyer shall take care of insurance of the goods.

- F. In the event of late delivery, the Seller shall first be given notice of default in writing.

#### **Article 5 — Payment**

- A. All payments shall be cash on delivery, without deductions or setoffs, at the offices of the Seller or to a bank account or giro account to be specified by the Seller, unless expressly agreed on otherwise in writing.
- B. In the event of late or incomplete performance by the Seller, the obligation of payment of the Buyer shall not be suspended, provided that, in case of termination because of force majeure pursuant to article 11, the Seller will pay back the part of the purchase sum that the Buyer has already paid.
- C. As long as the Buyer has not paid the purchase sum due by him, the Seller will be entitled to suspend fulfilment of his obligations until the Buyer has fulfilled these obligations or to cancel the agreement, without prejudice to the right of the Seller to claim compensation for late execution of or failure to execute the agreement.
- D. If not upon delivery than on the otherwise agreed on due date, the Buyer will be obliged by operation of law without any notice of default to pay interest from the due date on the amount still due of 2.5% on top of the promissory discount rate of De Nederlandsche Bank, without prejudice to further rights to which the Seller is entitled, including the right to recover any extraordinary recovery costs failing on the claim, at least 10% of the amount to be recovered, with a minimum of EUR 500,00 except for and in addition to any judicial costs.

#### **Article 6 — Order of payments**

- A. Payments made by the Buyer shall first serve to settle all interests and costs due, and subsequently any payable invoices that have been outstanding longest, even if the Buyer states that the payment relates to a later invoice.

#### **Article 7 — Setoff**

- A. The Seller will be entitled to set off the amounts due arising from the agreement against those that the Buyer is or will be due to the Seller.

#### **Article 8 — Retention of title**

- A. The Seller shall retain the title of any goods supplied to the Buyer, whereas they shall be at the account and risk of the Buyer, until all amounts have been fully paid that the Buyer owes for the goods that have been or are to be supplied or the work that is to be performed pursuant to the agreement, as well as the claims because of non-fulfilment by the Buyer in respect of this or similar agreement(s), including interest and collection costs.
- B. The Buyer and/or his auxiliary persons shall take any care required for this and shall take any suitable measures to separate the goods referred to in the previous paragraph and to keep them separate from the other goods present at his firm. To this end, the Buyer shall in any case store and/or mark the goods mentioned in the first paragraph separately in such a manner that these will be easily recognizable to third parties as property of the Seller. The Buyer will be obliged at any time to grant free access to the Seller or its authorized representative to the spaces where the goods supplied by the Seller are kept.

- C. The Buyer will be obliged to insure the goods supplied by the Seller under retention of title and keep them insured.
- D. As long as, pursuant to the first paragraph, the title of the supplied goods has not passed to the Buyer, the latter will not be allowed to sell the goods and/or to pledge them or to move them from his business in any manner.
- E. If the Seller relies on the retention of title stipulated by it, the Buyer will be obliged, upon request, to bring the supplied goods under the actual control of the Buyer, immediately and at no charge.

#### **Article 9 — Security**

- A. If the Seller desired so, the Buyer will be obliged at any time either to pay the purchase sum entirely or partially in advance or to furnish security that is sufficiently adequate in Seller's opinion for the fulfilment of his obligations towards the Seller.
- B. Circumstances that become known to the Seller after conclusion of the agreement and that, in Seller's opinion, affect Buyer's creditworthiness unfavorably, shall make the claim on the Buyer immediately payable; the Seller will then be entitled to claim payment immediately or to apply the stipulated in paragraph a of this article.

#### **Article 10 — Guarantee and Liability**

- A. The Buyer accepts the purchased goods in the condition at the time of delivery, without further examination, without any indemnity or guarantee in respect of apparent or latent defects or damage.
- B. In no case will the Seller be obliged to pay any compensation for damage of whatever kind that came about or was caused by the use of the delivered goods or by the unsuitability thereof for the purpose for which the Buyer purchased them.
- C. The mere acceptance of the delivered goods by or on behalf of the Buyer shall safeguard the Seller against any claims of the Buyer and or third parties for payment of compensation, irrespective of whether the damage was caused by manufacturing or composition errors, or by anything else.

#### **Article 11 — Force majeure**

- A. Circumstances beyond Seller's control or through no fault of the Seller, even if foreseeable, that are of such nature that the fulfilment of the agreement is entirely or partially prevented or cannot be demanded from the Seller in reasonableness, as well as, insofar as not already included in this, war, threat of war, civil war, riots, industrial action, lockouts, transport problems, fire and other serious disturbances in the company of the Seller or its suppliers, shall be considered force majeure.
- B. In the event of force majeure, the Seller will be entitled to suspend the fulfilment entirely or partially or dissolve the agreement insofar as not executed and to claim payment for the part that was supplied, without obligation on the part of the Seller to pay any compensation to the Buyer.

#### **Article 12 — Indemnity, compensation**

- A. Insofar as non-fulfilment by the Buyer of his contractual or legal obligations would result in liability of the Seller towards third parties, the Buyer undertakes hereby to indemnify the Seller against all consequences of this liability.
- B. The Buyer will be liable for any loss, including loss of profits and costs that the Seller or, indirectly via the Seller, third parties would suffer as a result of Buyer's non-performance or his unlawful act.

#### **Article 13 — Dissolution and compensation**

- A. If the Buyer does not fulfil one of his obligations arising from this and/or previous/other agreements towards the Seller or if there is considerable doubt whether he can fulfil his obligations arising from the agreement, the Seller will be entitled to dissolve all agreements concluded with the Buyer, entirely or partially, via written notification without notice of default and/or judicial intervention insofar as required, without prejudice to the right of the Seller of full compensation, including all judicial and extrajudicial costs.
- B. The Seller will be entitled to the same rights and possibilities if:
- C. The Buyer files for bankruptcy or petitions for (provisional) suspension of payment, or, pursuant to a legal provision, is put under administration or placed under guardianship;
- D. The Buyer is declared bankrupt;
- E. The Buyer transfers, winds up or closes down (parts of) his company entirely or partially;
- F. The business or part of the business of the Buyer is attached or seized under a warrant of execution.
- G. The claims that the Seller might have or obtain due to the dissolution of the agreement, including the possible claim for compensation of loss and costs incurred by the Seller, shall be immediately and entirely payable.

#### **Article 14 — Administration evidence**

- A. Except for evidence to the contrary, in respect of the agreement the information appearing in Seller's administration shall be decisive.

#### **Article 15 — Disputes**

- A. Any disputes arising from or in connection with the agreement to which these terms and conditions apply or the terms and conditions themselves and their interpretation or execution, both of a factual and of a judicial nature, shall be put before the competent court in Rotterdam.
- B. All agreements to which these terms and conditions apply entirely or partially shall be governed by Dutch law.

#### **Inquiries**

Should you have any questions concerning these Terms, please contact us through the website [www.maxmachinery.nl](http://www.maxmachinery.nl)