

**General Terms and Conditions for Deliveries and Services of CLAAS  
Fertigungstechnik GmbH (valid: 01/2011)**

**1. Offers and Conclusion of Contracts**

- 1.1 The following Terms and Conditions shall apply to all offers and sales in particular of tools, assembly and production lines, automation as well as other deliveries and services of CLAAS Fertigungstechnik GmbH (hereinafter called the "Supplier"). They shall also apply to all follow-up orders. Any terms and conditions of the customer which deviate from these Terms and Conditions shall not become part of any contract even if such terms and conditions are not expressly rejected by the Supplier.
- 1.2 A contract shall come into existence only through the written order confirmation of the Supplier, even if the order was placed with a branch office or a representative.
- 1.3 Any subsidiary agreements or amendments to the content of a contract shall only be effective if confirmed by the Supplier in writing. Any statement of dimensions, weights and other technical particulars as well as illustrations, descriptions and drawings of an item of delivery which are contained in literature, brochures, product descriptions and other documents of the Supplier shall only be deemed approximate unless expressly declared by the Supplier in writing in the order confirmation as being binding. Offer documents, drawings, samples and other such like information of a physical or non-physical nature shall be subject to the property right and/or copyright of the Supplier and may not be made accessible to any third party except with the Supplier's consent.
- 1.4 The Supplier reserves the right to make changes to the technical design or styling of an item of delivery even after conclusion of contract provided such changes do not materially change the item of delivery and are not unreasonable for the customer.
- 1.5 The customer shall be bound by his order for 4 weeks. This period shall begin on receipt of the customer's written order by the Supplier.

**2. Prices**

- 2.1 Except as may be agreed otherwise, prices for items of delivery are quoted ex works/warehouse, including loading onto the means of conveyance but not including costs of packaging, insurance or installation and assembly. The prices / any payments on account shall be subject to the addition of value added tax or customs duties at the statutory rate as well as any forwarding costs. Where it has been agreed that delivery is to be effected more than 4 months after conclusion of contract, the Supplier's prices valid on the day of dispatch shall be charged.
- 2.2 Even in cases where delivery has been agreed carriage paid, transport shall be for the customer's risk, unless expressly agreed otherwise.

**3. Terms of Payment**

- 3.1 Except as agreed otherwise, payments shall be due in cash immediately after receipt of invoice, without any deduction, and shall be made free to Supplier's place for payment.

Representatives or other sales personnel of the Supplier are not authorised to receive payment. The Supplier reserves the right to deliver replacement parts and accessories COD.

- 3.2 In the case of failure to meet any specified date for payment, the customer shall be deemed to be in arrears without any reminder being necessary (Art. 286 Para. II BGB [German Civil Code]). In this case, the Supplier shall have the right pursuant to Art. 288 BGB to charge interest on arrears at a rate of 8% p.a. above the base interest rate (Art. 247, 288 II BGB) unless he can prove having sustained higher damage through arrears. Bills of exchange and cheques will only be accepted on account of payment. Where bills of exchange and cheques are drawn on secondary bank places, the Supplier shall not be liable for timely protest. All discount, bill and collection costs shall be borne by the customer. Claims for defects relating to an item of delivery shall not entitle the customer to withhold any due payments. The customer may not withhold payment or make offset in respect of any of his counterclaims which are disputed or have not been finally and absolutely established at law.
- 3.3 Where the customer falls into arrears with an amount equivalent to at least 1/10 of the purchase price, the entire outstanding amount shall become due for payment immediately without any reminder or collection letter being necessary. Where the customer's own customer has himself paid for the item of delivery in whole or in part, the claim of the Supplier against the customer shall to that extent become due for payment immediately. The same shall also apply where agreed bills of exchange or cheques are not drawn or honoured in good time as well as in the case of cessation of payments, petition for opening of bankruptcy proceedings against the customer or foreclosure or levy of execution. Where in the case of bankruptcy proceedings claims are reduced to a dividend, all claims to any agreed discounts or bonuses shall lapse.
- 3.4 If the Customer has been in arrears for more than 30 days to an amount of at least 1/10 of the purchase price, the Supplier may take back the item delivered at the Customer's charge while fixing an appropriate term until payment of the amount payable to secure his claims, if this is acceptable for the purchaser, e.g. in case of items delivered which have only been stored, which have not been sold yet and which are not subject to any current use. The return shall not imply a repudiation of contract by the Supplier. In case of return, a right of retention shall be excluded for the Customer.
- 3.5 In the event of any justified doubts about the purchaser's solvency or creditworthiness, which are also indicated by the delay in payment, the Supplier shall be entitled – notwithstanding any other rights – to demand securities or advance payments for pending services or performances, to make all claims from the business relationship due for payment and to make an objection of uncertainty within the meaning of § 321, in conjunction with § 323 of the German Civil Code.

#### **4. Time of Delivery**

- 4.1 Delivery periods and dates shall be without engagement except where a definite time of delivery has been agreed.
- 4.2 The observation of the time of delivery shall be subject to the correct and timely own delivery. Any delays becoming apparent shall be communicated by the Supplier as early as possible. The time of delivery shall be deemed to have been met if the item of delivery has left the Supplier's works/warehouse or the Supplier has advised of readiness for delivery by the end of such time or period. The period of performance in respect of deliveries or services for which acceptance is required shall be deemed met on advice of readiness for acceptance inspection. The time of delivery shall be reasonably extended in the event of any action in connection with labour disputes as well as on the occurrence of any unforeseen obstacles (e.g. interruption or disruption of business operations, embargoes, unavailability of transport, measures by official bodies) and in the case of circumstances of a force majeure nature

which are beyond the control of the Supplier, provided such obstacles are demonstrably of significant influence on the completion or delivery of an item of delivery. The Supplier shall notify the customer of the beginning and end of such circumstances as soon as possible.

- 4.3 Compliance with a time or period for delivery shall be dependent on timely performance of contract and provision of assistance by the customer, e.g. in respect of the provision of documents, calculations, load histograms, permits, approvals or the making of any agreed payment on account or the provision of any agreed security for payment. Acceptance by the Supplier of any subsequent changes to the scope of order shall likewise cause the time or period for delivery to be appropriately extended.
- 4.4 The customer may repudiate the contract without granting any period of notice if complete performance should become finally and absolutely impossible for the Supplier before the passing of risk. The customer may likewise repudiate the contract if, in the case of orders, the performance of part of the contract becomes finally and absolutely impossible and the customer has a justified interest in rejecting part-delivery. If this is not the case, the customer shall have a duty to pay the purchase price attributable to the part-delivery. In all other respects, Fig. 9 of these Terms and Conditions shall apply.
- 4.5 Should the Supplier fall into arrears and the customer suffer loss or damage as a result thereof, he shall have the right to claim flat-rate compensation for delay. This rate shall be 0.5% for each week of delay, though altogether not more than 5% of the value of that part of the complete delivery which because of the delay cannot be used in good time or in the contractual manner. Where the customer allows the Supplier when in delay a reasonable additional time for performance - taking the exceptions allowed by law into account - and the Supplier fails to make performance within such time, the customer shall have the right, subject to the provisions of law, to repudiate the contract. He undertakes to explain, upon the Supplier's demand, within a reasonable period whether he will make use from his right to cancel the Contract. All other claims in respect of delay in delivery shall be governed exclusively by Fig. 9 of these Terms and Conditions.
- 4.6 If dispatch is delayed on the request of the customer, the costs arising from storage, when storage is done at the Supplier's works, shall, commencing one month from advice of readiness for dispatch, be charged to the customer, such charge to be at least 0.5% of the invoice amount for each month except insofar as the customer is able to show that lower costs have been incurred.
- 4.7 The Supplier shall, however, have the right, after allowing a reasonable additional time and such time having elapsed, to dispose of the item of delivery elsewhere and to supply the customer within a reasonably extended time.

## **5. Bearing of Risk and Acceptance of Delivery**

- 5.1 Delivery is effected ex works either by collection, dispatch or acceptance. If the item of delivery is not collected by the customer or an authorised representative of the customer at the specified delivery date, the Supplier shall be deemed authorised to ship the item of delivery for the account and risk of the customer. If the item of delivery is collected by the customer or his authorised representative, the risk shall pass to the customer on such collection. In the case of shipment, the risk shall pass to the customer as soon as the item of delivery has been handed by the Supplier to a carrier or forwarder even in cases where part-deliveries are made or the Supplier has agreed to provide additional performance, e.g. to bear the transport costs or to deliver and erect the item of delivery.
- 5.2 If so requested by the customer, the Supplier will insure the goods for the customer's expense against theft, breakage, transport, fire and water damage as well as other insurable risks.

- 5.3 Should shipment or acceptance be delayed through reasons for which the customer is responsible or through circumstances of force majeure nature, the risk shall pass on the day of readiness for delivery or acceptance.
- 5.4 Delivered items shall, even if they have minor defects, be received or accepted by the customer, without prejudice to the rights pursuant to Fig. 8 of these Terms and Conditions.
- 5.5 The Supplier shall have the right to make part-deliveries, if acceptable for the Customer.

## **6. Repudiation of Contract**

The Supplier shall be entitled to cancel the Contract if, upon conclusion of the Contract, any circumstances having a substantial effect on the execution of a Contract have developed - without the Supplier having any possibility to take influence - in a way that the performance of the Contract becomes impossible or unacceptably complicated (e.g. a failure of delivery beyond the Supplier's responsibility but due to the previous Supplier's fault, or the possibility of delivery under very complicated conditions exclusively). Without prejudice to all claims for indemnity, the Supplier shall likewise be entitled to cancel the Contract if the Customer commits a serious violation of his contractual obligations, especially if the Customer is behind schedule of acceptance of delivery of the machine more than one month after notice of dispatch, or if he can reasonably be blamed for a violation of his duty to take care with respect to the treatment of the item of delivery supplied under reservation of title. Apart from that, the right of cancellation of the Supplier and the Customer shall be subject to the legal requirements.

## **7. Reservation of Title**

- 7.1. The Supplier reserves title to all items of delivery until all claims, including future or conditional ones, of the Supplier against the customer arising from the business relationship between them, including interest and costs, have been settled. This shall apply even if any or all claims of the Supplier are placed on current account and a balance is drawn and recognised. The supplier shall have the right, during normal business hours, to inspect and record items of delivery supplied under reservation of title and not yet paid for in full by the Customer during the normal business opening hours at the Customer's plant.
- 7.2 In the case of any conduct in breach of contract by the customer, and in particular any delay in payment, the Supplier shall be entitled to cancel the Contract and to take back the conditional goods or to demand the assignment of the claims for possession against any third parties. The levy of execution of the conditional goods by the Supplier shall not be deemed as a cancellation of Contract. The application for an opening of insolvency proceedings on the assets of the Customer shall likewise entitle the Supplier to cancel the Contract and to demand immediate return of the item delivered.
- 7.3 The customer may neither give the item of delivery in pledge nor assign it by way of security. In the case of attachment or other such interference by third parties, the customer shall have a duty to notify the Supplier without delay. The reservation of title shall not be lifted by payments of third parties, and in particular not by payments of endorsers. To this extent, the rights of the Supplier shall pass to the payor. The customer shall have a duty to insure the goods to which the Supplier reserves title adequately against fire, burglary, theft and water damage. Insurance claims are hereby already assigned to the Supplier in an amount equivalent to the value of the goods. The Supplier accepts this assignment.
- 7.4 The customer shall have the right to resell the item of delivery in the normal course of business and on such terms and conditions as correspond to these Terms and Conditions of Sale. Should he find himself in financial difficulties or should he have failed to settle his debts towards the Supplier, however, he may dispose of items of delivery only with the express

consent of the Supplier. Any disposal without such consent shall be ineffective unless such consent is subsequently given.

- 7.5 The customer hereby assigns to the Supplier all claims or considerations accruing to him from sale or on other legal grounds in respect of goods to which the Supplier reserves title. The customer shall, notwithstanding such assignment, remain entitled to collect claims, but the Supplier shall also have the right to collect claims directly from the ultimate customer. The Supplier will avoid doing so, however, for as long as the customer fulfils his obligations in the due manner. The Supplier may demand that the customer provide him with information on all assigned claims and the persons or parties by whom they are owed and with all other documents necessary for their collection. Such third-party debtors shall also, on the Supplier's request, be informed of the assignment (absolute assignment). If the item of delivery is resold together with other goods not belonging to the Supplier, the claim of the customer against his customer shall be deemed assigned in the amount of the delivery price agreed between the Supplier and the customer.
- 7.6 Processing by the customer of items of delivery to which the Supplier reserves title shall always be done on the Supplier's behalf. Where an item of delivery to which the Supplier reserves title is combined with other items not belonging to the Supplier, the Supplier shall have co-title to the new item so created in the same proportion as that between the value of the item of delivery to which the Supplier reserves title and the new item.
- 7.7 The Supplier undertakes to release securities to which he is entitled to the extent that their value exceeds by more than 20% the value of the claims secured thereby, insofar as such claims have not already been paid.
- 7.8 Despite the aforesaid reservation of title, the customer shall nevertheless bear the risk of loss or deterioration of the delivered items.

## **8. Warranty**

The Supplier warrants the items of delivery in respect of material or quality defects or defects of title, to the exclusion of all other claims but without prejudice to Figure 9 of these Terms and Conditions, as follows:

Material or quality defects:

- 8.1 Where items of delivery are intended for installation in machines and equipment of the customer and have not been developed and/or designed by the Supplier for this purpose, the Supplier gives no warranty for sufficient suitability, strength or durability. In the absence of any agreement to the contrary, responsibility for testing for suitability of the items of delivery for the customer's purposes shall lie solely with the customer. The following provisions shall only apply subject to the foregoing reservations. All items of delivery or parts thereof which prove defective due to a circumstance existing before the passing of risk will, at the Supplier's preference, be repaired or replaced. Any such defects must be notified to the Supplier in writing immediately upon discovery.
- 8.2 After consulting with the Supplier, the customer shall grant the Supplier the necessary time and opportunity to enable him to effect all repairs or replacements as the Supplier may deem necessary. Should the customer fail to do so, the Supplier shall be released from liability for any consequences arising therefrom. Where claims for defects prove justified, the Supplier shall, of the costs arising through repair or replacement, bear the costs of the replacement item including the costs of delivery within the Federal Republic of Germany as well as the reasonable costs for dismantling and fitting or for repair including reasonable transport costs within the Federal Republic of Germany in the case of repair outside of the customer's workshop, except to the extent as may be otherwise agreed, as well as, if this can

reasonably be demanded in light of the circumstances of the individual case, the costs for provision of any specialist personnel of the Supplier. If any parts are incorporated within the framework of the repair work, the Customer may assert claims for defects of quality concerning those parts on the basis of the purchase contract only up to expiry of the original statutory period of limitation. Any replaced parts become the property of the Supplier.

- 8.3 The Customer shall be entitled, within the provisions of the applicable law, cancel the Contract if the Supplier – while taking due account of the exceptions allowed by law - lets a reasonable period allowed to him for repair or replacement of a material or quality defect pass without making repair or replacement. In case of only minor defects, the Customer shall only have the right to claim a reduction in the purchase price. Otherwise, the right to reduce the purchase price shall be excluded.
- 8.4 In the case of defects in essential products bought in from third parties and used by the Supplier in the item of delivery, the Supplier shall have the right to refer the customer initially to the service organisation of the supplier concerned in respect of claims for repair or replacement, without this implying any limitation in the warranty given by the Supplier.
- 8.5 No warranty is given for evident defects (including wrong deliveries or quantity shortages) unless notified in writing by the customer to the Supplier within 10 days from receipt of the item of delivery by the customer or for damage which is caused by natural wear and tear, in particular to seals, insulations and springs, as well as by unsuitable or improper use, modifications or repairs not approved by the Supplier, faulty fitting or commissioning by the customer or third parties, failure to comply with operating and maintenance instructions, use of unsuitable fuels and the like or replacement parts which are not equivalent to original CLAAS replacement parts, or biological, chemical, electrochemical or electrical influences and for which the Supplier is not responsible.
- 8.6 The sale of a used machine to the Customer who acts in the discharge of his commercial or independent professional activity (entrepreneur) shall be made while excluding any liability for defects of quality.
- 8.7 Nothing in this Contract shall affect the entitlement to further claims in case of acceptance of a guarantee or a procurement risk or the malicious non-disclosure of a defect, or to the extent as a liability based on compulsory legal provisions is applicable.

Defect of title:

- 8.8 If the use of the item of delivery leads to a violation of industrial property rights or of proprietary rights in the Federal Republic of Germany, the Supplier shall basically provide the Customer with the right – at his own expense – for the continued use of the item delivered or modify the item delivered in a way acceptable for the Customer, to the effect that the violation of industrial property rights does no longer persist. If this is not possible at economically reasonable conditions or within an appropriate period, the Customer shall be entitled to cancel the Contract. The Supplier shall likewise be entitled to cancel the Contract under the same circumstances. Moreover, the Supplier shall release the Customer from any undisputed or bindingly established claims of the corresponding owners of industrial property rights within parties' internal relationship ("inter partes").
- 8.9 Except when otherwise stipulated in figure 9 of these Terms and Conditions, the Supplier's obligations mentioned in par. 8.8 of these contractual provisions shall be deemed as finalized in case of any violation of industrial property rights or proprietary rights. They shall only be applicable if (a) the Customer advises the Supplier immediately of any industrial property rights or proprietary rights claimed; (b) the Customer supports the Supplier appropriately in defending the claims asserted and, if need be, makes it possible for the Supplier to realize the modifications according to par. 8.8. c) all defensive measures including extrajudicial

regulations are reserved to the Supplier d) the defect of title is not based on an instruction by the Customer and (e) the infringement has not been caused by the fact that the Customer has modified the item delivered arbitrarily or has used it in a way not in conformity with the Contract.

## **9. Liability**

- 9.1 If through the fault of the Supplier the item of delivery cannot be used by the customer in the manner provided for in the contract due to failure to provide proposals or advice or to the provision of defective proposals or advice before or after conclusion of contract or due to breach of other subsidiary contractual obligations - in particular in respect of instructions for the operation and maintenance of the item of delivery - the provisions under Figure 8 and Figure 9.2 ff. of these Terms and Conditions shall apply analogously, whereby all other claims of the customer shall be excluded.
- 9.2 The limitations of liability outlined below shall not be applicable in case of damage to life, body and health of persons. Regardless of a fault requirement, even a potential liability of the Supplier in case of malicious non-disclosure of a defect, from the adoption of a guarantee or a procurement risk, or according to the Law of Product Liability shall remain unaffected.
- 9.3 The Supplier's liability for damages which have not been occurred on the item of delivery itself shall be limited – for whatever legal grounds – to wrongful intent and gross negligence. The limitation shall likewise be applicable to representatives, vicarious agents or staff members of the Supplier.
- 9.4 If, on the basis of the applicable law, the Supplier is also liable for a damage that has occurred as a result of slight negligence, the liability shall only be applicable in case of a violation of duties, the performance of which will only make it possible to ensure the proper execution of the Contract and the observation of which the Customer may rely on regularly ("obligations essential to the Contract"), this being limited to the typically foreseeable damage upon conclusion of the Contract. The personal liability of representatives, vicarious agents and employees of the Supplier shall be excluded for the damages they might have caused due to a slight negligence.
- 9.5 To the extent as the damage is covered by an insurance contract (except for an insurance in terms of fixed sums / endowment insurance) concluded by the Customer for the damaging event, the Supplier shall exclusively be liable for any related disadvantages occurred to the Customer (e.g. higher insurance premiums, interest disadvantages, adjustment of claims by the insurance company).

## **10. Limitation**

Limitations of claims by the Customer on new items of delivery shall become statute-barred if the Customer is an entrepreneur, within 12 months from surrender of the item of delivery to the final Customer at the earliest, but within 15 months from delivery to the Customer at the latest. Any further claims from the Customer – for whatever legal grounds, including claims from an acceptance of guarantee – shall become statute-barred within 12 months from the transfer of risk to the Customer. The statutory deadlines shall apply to claims for damages according to 9.2. ff. – except for those which originate from acceptance of a guarantee.

## **11. Use of Software**

Where the scope of supply also includes software, the customer shall be granted a non-exclusive right to use the software including the documentation supplied or to permit use by his customer in connection with the relevant item of delivery and on the following terms and conditions. Use of the software outside of the item of delivery is prohibited. The customer

may reproduce, modify or translate the software or reverse engineer from the object code to the source code only within the legally permitted scope (Art. 69a ff. UrhG [German Copyright Act]). The customer undertakes not to remove or alter any manufacturer indications and in particular copyright notices. All other rights to the software and documentation including any copies shall remain with the Supplier or the software supplier. The customer shall also impose obligations of the same tenor on the end customer of the item of delivery.

## **12. Data Protection**

The Supplier will store, according to the provisions stipulated by data law, especially the BDSG (German Data Protection Act), individual-related data of the Customer and the end customer within the framework of business connections, or will communicate, use, change and delete them. The data might be forwarded to CLAAS KGaA mbH and to other subsidiaries of the CLAAS group. The information will be used for assistance services granted by the Supplier or the subsidiaries of the CLAAS group, in particular for the follow-up of cases of warranty and product monitoring. The accomplishment of surveys about Customer satisfaction shall likewise form part of the customer assistance service.

## **13. Place of Performance and Legal Venue**

- 13.1 The place of performance shall be the Supplier's place of business. The contractual relationship between the parties shall be governed by the law of the Federal Republic of Germany to the exclusion of the United Nations Convention on the International Sale of Goods of 11 April 1980.
- 13.2 All disputes arising out of the business relationship with merchants shall be filed, irrespective of the value of matter in dispute, with the Magistrate County Court at Münster (Landgericht Münster). This shall also be the legal venue for all bills of exchange –, cheque - and other documentary proceedings, arising in connection with supply and/or service. The Supplier shall be entitled to take legal action at the Customer's place of business as well.

If the Customer has its place of business outside the Federal Republic of Germany, the Supplier as the plaintiff is entitled to bring the matter before a court of arbitration, which shall finally settle without recourse to the ordinary courts of law under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with these Rules. Language of the arbitration procedure shall be English. Place of the arbitral hearings shall be Düsseldorf, Germany.