

# General Terms and Conditions of Sale of SPINNER automation GmbH

Status: April 2024

## Section 1 General provisions – Scope of application

1. Our terms and conditions of sale (GTC) apply exclusively, including for all future deliveries and services, even if they are not separately agreed again. Changes to this shall take effect as soon as the customer is notified thereof. Any terms and conditions of the customer that conflict with or deviate from our General Terms and Conditions shall not apply unless we have agreed to them in writing.
2. All agreements between us and the customer must be made in writing. Deviations apply only to the individual delivery process.
3. Our GTC apply only to entrepreneurs (Sections 14, 310 I BGB).

## Section 2 Offer – Agreed Quality – Technical Changes

1. Our offer is subject to change without notice, unless otherwise stated in the offer and order confirmation (OC). 2. The subject matter of the contract is exclusively the delivered item sold with the agreed quality and the intended use specified in our underlying brochure description, the offer and the enclosed General Terms and Conditions. Any unilateral assumptions made by the customer regarding the agreed quality or a specific intended use require our written consent, even if we are aware of them.
3. We reserve the right to
  - a, all property rights and copyrights to illustrations, drawings, calculations and other documents,
  - b, technical changes in the sense of technical progress, improved use or operational safety,
  - c, the recalculation of our offer in the event of a unilateral subsequent change to the scope of the order by the customer.

## Section 3 Prices – Terms of payment

1. Unless otherwise agreed, our prices are “ex works”, plus separately invoiced packaging.
2. Unless otherwise expressly agreed, the price agreed in the order confirmation is a fixed price until delivery of the contractual item. If the customer unilaterally postpones the delivery date to a later date, we reserve the right to adjust our prices appropriately if cost increases occur after the original delivery date, which will be proven to the customer upon request.
3. Statutory value added tax is not included in our prices and will be shown separately on the invoice at the statutory rate applicable on the date of invoicing.
4. Payments shall be made in accordance with the terms of payment specified in the offer and in the order confirmation by cash transfer without any deductions to the supplier's paying agent. We do not accept bills of exchange or cheques. In the event of late payment or deferral of payments, the statutory provisions shall apply. We reserve the right to claim further damages.
5. Offsetting against counterclaims is excluded unless these are undisputed or have been legally established.

## Section 4 Delivery period

1. The delivery period begins with the dispatch of the order confirmation, but not before all necessary technical questions have been clarified. 2. Compliance with the delivery period also requires the prior and timely fulfilment of partial payment and other obligations on the part of the customer. If these are fulfilled late, the agreed delivery date shall be postponed accordingly, but at least by the duration of the delay. The right to plead non-performance of the contract is reserved.
3. The delivery period shall be extended appropriately in the event of unforeseeable external events beyond our control, insofar as these can be proven to have a significant influence on the completion or delivery of the delivery item. This also includes temporary impediments to performance by subcontractors or suppliers for which we are not responsible. Partial deliveries are permitted.
4. We shall be liable in accordance with the statutory provisions if a delay in delivery is due to an intentional or grossly negligent breach of contract for which we or our representatives or vicarious agents are responsible; in such cases, however, our liability shall be limited to the foreseeable typical damage.
5. In the event of a unilateral postponement of the delivery date by the customer to a later date or in the event of failure to collect finished machines at the agreed time, we reserve the right to charge for the costs incurred for storage and preservation of the machine. Without individual proof, a flat-rate compensation of 0.5% of the order value per week of postponement, up to a maximum of 10% of the order value, shall be charged, whereby the customer shall be permitted to prove that no damage or significantly less damage than the flat rate charged has been incurred.

## Section 5 Transfer of risk

1. The risk shall pass to the customer at the latest upon dispatch of the delivery, even if partial deliveries are made or we have assumed further services such as shipping costs, delivery or installation.
2. At the request of the customer, we shall cover the delivery with transport insurance at the customer's expense.

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**Entry in the commercial register:**  
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VAT ID no. DE225524733  
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**Management:**  
Dominik Jauch, Jörn Maier  
Registered office of the company:  
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### Section 6 Liability for defects

1. The customer's warranty rights presuppose that they have duly fulfilled their obligations to inspect and give notice of defects in accordance with Section 377 of the German Commercial Code (HGB). A further prerequisite for the assertion of warranty claims is proper maintenance by the customer and appropriate documentation in accordance with the maintenance booklet supplied and the maintenance intervals specified therein, unless the customer can prove that a defect is not due to a lack of maintenance or non-compliance with the intervals.
2. The subject matter of the contract is free from material defects if, at the time of transfer of risk, it meets the subjective requirements in accordance with the underlying offer, the declaration of acceptance made in this regard and the General Terms and Conditions. Notwithstanding the objective requirements for normal use pursuant to Section 434 para. 3 of the German Civil Code (BGB), only the specific quality and suitability agreed in the aforementioned documents, together with handover in accordance with the protocol, shall apply. Accordingly, it does not constitute a material defect if the subject matter of the contract does not correspond to the usual quality for normal use.
3. Public statements made by third parties or persons in the sales chain regarding specific characteristics or the quality of the contractual item, whether verbal or written, require our express written confirmation.
4. If the delivery is defective, we shall initially be obliged, at our discretion, to remedy the defect or deliver a defect-free item. If the rectification of defects/replacement delivery fails, the customer may, at his discretion, withdraw from the contract or reduce the purchase price.
5. For essential third-party products and material defects, our liability is limited to the assignment of the liability claims to which we are entitled against the supplier of the third-party products.
6. In the event of withdrawal, we shall be entitled to demand reasonable compensation for the benefit derived by the customer from the subject matter of the contract up to the time of withdrawal. The compensation for use is calculated on the basis of a total usage period of 5 years (corresponding to 10,000 operating hours under normal operating conditions) for the subject matter of the contract, less an appropriate reduction corresponding to the extent to which use was restricted.
7. We shall not be liable for any consequences arising from modification or repair work carried out improperly by the customer or third parties without our prior consent; this also applies to the installation or use of spare parts or accessories not purchased from us.
8. The warranty for material defects shall be excluded in the event that the installation is not carried out properly by us or our vicarious agents at the request of the customer, as well as in the event that our technical and/or technological instructions for use or maintenance recommendations are not followed.
9. We shall bear the expenses necessary for the implementation of subsequent performance. This does not apply to increased expenses incurred by the customer's involvement of third parties or by the fact that the delivered item has been moved to a location other than the customer's registered office after delivery.
10. At our request, the customer shall make the delivery item available to us for the purpose of subsequent performance and shall permit its return transport to our factory. If a complaint by the customer proves to be unjustified, the customer shall bear the costs of the intervention if, as a result of gross negligence, they were unaware that it was not a claim for subsequent performance for which we were responsible.
11. The warranty period for the delivery being free of defects is one year, calculated from the transfer of risk, unless otherwise agreed in the order. The warranty period is also limited to 2,000 operating hours per calendar year, corresponding to single-shift operation with 8 hours/day and 250 working days/year. Operating hours are defined as the hours of operation recorded by the central operating hours counter in the control cabinet, which starts running when the machine's main switch is turned on.
12. Our liability for intentional or grossly negligent breaches of duty, including those committed by our legal representatives or vicarious agents, shall be governed by the statutory provisions. Our liability for other damages in the event of a slightly negligent breach of a primary obligation, including by our legal representatives and vicarious agents, is limited to the foreseeable, direct average damage typical for this type of contract. We shall not be liable for slightly negligent breaches of insignificant contractual obligations.
13. Our liability, including that of our legal representatives and vicarious agents, for culpable injury to life, limb or health, as well as for claims under the German Product Liability Act, remains unaffected.

### Section 7 Warranty for defects in software products

1. In accordance with the terms and conditions of upstream suppliers of control software, no claims for material defects shall be accepted for software products in the event of only minor deviations from the agreed functionality or in the event of non-reproducible software errors. Likewise, there shall be no obligation to rectify defects if the error can be avoided by using reasonable, suitably adapted input routines.
2. If the problematic software components are those for which we do not have the source code (external control software from Siemens or Fanuc, for example), we are only obliged to rectify the defect if we are in possession of a debugged version or if such a version can be obtained at reasonable expense AND if implementation is possible in terms of software at reasonable expense. If a hardware upgrade is necessary to enable newer software versions to run, the hardware costs shall be borne by the customer requesting the upgrade.

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3. For machines with Siemens control systems, the special terms and conditions of sale of Siemens Industrie Software GmbH (SISW) in their current version, which have already been made available or can be viewed at any time, shall apply.

#### Section 8 Fundamental limitation of liability

We exclude any further liability for damages beyond that set out in Sections 6 and 7 above, in particular liability for property damage and financial loss due to loss of production, loss of profit, loss of data and information, contractual claims by third parties, and financing expenses. This also applies to the personal liability of our management, our employees, staff, representatives and vicarious agents.

#### Section 9 Exemption

The customer shall indemnify us in full against all third-party claims if and to the extent that the customer's deliveries and services were the cause of such third-party claims.

#### Section 10 Right of withdrawal

We reserve the right to either withdraw from the contract or demand security for the delivery if, after conclusion of the contract, the customer's financial situation deteriorates, in particular in the event of insolvency or over-indebtedness, or if we subsequently become aware, through no fault of our own, of a deterioration in the customer's financial situation that already existed at the time of conclusion of the contract. The expenses incurred by us in reliance on the conclusion of the contract shall be reimbursed by the customer.

#### Section 11 Withdrawal and termination by the customer

If the customer declares withdrawal or termination of the contract without justification, they shall be liable to us for compensation for all services rendered up to that point. In all cases, we shall be entitled to demand a lump sum for damages or compensation for a reduction in value of up to 20% of the order value, whereby the customer shall be expressly permitted to prove that no damage or reduction in value has occurred or that it is significantly lower than the lump sum.

#### Section 12 Retention of title

1. We reserve title to the delivery item until all payments from the existing current account relationship (business relationship) have been received, whereby the reservation refers to the recognised balance.
2. In the event of conduct in breach of contract, in particular default in payment, we shall be entitled to set a deadline for performance and, if this deadline expires without result, to withdraw from the purchase contract.
3. The customer is obliged to treat the delivery item with care. If maintenance and inspection work is required, the customer must carry this out in good time at their own expense.
4. During the period of retention of title, we shall be entitled to insure the delivery item at the purchaser's expense against fire, water, theft and other damage at replacement value, unless the purchaser can provide evidence of insurance.
5. The purchaser may not pledge the delivery item or assign it as security. In the event of seizure, confiscation or other disposal by third parties, the customer must notify us immediately.
6. Any resale of the delivery item requires our written consent. In this case, the customer hereby assigns to us all claims against third parties arising from the resale, regardless of whether the delivery item has been resold without or after processing, up to the amount of the purchase price agreed between us, including value added tax.
7. Any processing or transformation of the delivery item shall always be carried out on our behalf. If the delivery item is processed or inseparably mixed with other items not belonging to us, we shall acquire co-ownership of the new item in proportion to the value of the delivery item (final invoice amount including VAT) to the other processed or mixed items at the time of processing or mixing. The same applies to the item created by processing or mixing as to the delivery item supplied under reservation.
8. To collect this claim on our behalf, the customer remains authorised even after the assignment, without prejudice to our authority to collect the claim ourselves. However, we undertake not to collect the claim as long as the customer meets their payment obligations, is not in default of payment or over-indebted, and no application has been made to open insolvency or composition proceedings. If this is the case, we may demand disclosure of the assigned claims and their debtors, as well as all information necessary for collection, handover of all related documents and disclosure of the assignment to the debtors/third parties. We undertake, at the discretion and request of the customer, to release the securities to which he is entitled to the extent that the realisable value of the securities exceeds the claims to be secured by more than 10%.

#### Section 13 Recycling of old machines

We undertake to our customers to take back old machines from our production free of charge, dismantle them professionally and dispose of them in an environmentally friendly manner, provided that they are delivered to our factory free of charge in advance.

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**Section 14 Export of “dual-use” goods**

Our CNC machine tools can be classified as “dual-use” goods and are therefore subject to authorisation by the competent authorities under certain circumstances when exported to countries outside the EU. As a precautionary measure, we would therefore like to point out to all customers that the resale of such machines to third countries outside the EU must be legally reviewed in each case and that the exporter of the machine is responsible for compliance with the legal provisions of the Federal Republic of Germany and the EU.

**Section 15 Place of jurisdiction – Place of performance**

The place of performance for delivery and payment, as well as the place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship, is our head office. However, we shall also be entitled to bring legal action against the customer at their place of business.

**Section 16 Severability clause**

If any of the above conditions should not become part of the contract in whole or in part, or should be or become invalid, the remaining provisions and the contract between the parties shall remain valid. The same applies if a gap requiring supplementation arises after conclusion of the contract. The content of the contract is governed by the statutory provisions of the Federal Republic of Germany with regard to provisions that are not part of the contract or are invalid.

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