

Terms and Conditions for Deliveries of Machines in the Czech Republic and the Slovak Republic

1. General Provisions

- 1.1. Any deliveries and performances by DMG MORI Czech s.r.o., registered office: Kaštanová 392/8, Brno - Brněnské Ivanovice, business ID (IČ): 25 57 55 03 (hereinafter also referred to as the "Supplier") are governed by these Terms and Conditions which form an inseparable part of any agreement concluded between the Supplier and any customer (hereinafter also referred to as the "Agreement"), including purchase contracts and work performance contracts.
- 1.2. In the sense of these Terms and Conditions, the term supplier refers to a seller or manufacturer and the term customer refers to a buyer or customer; the purchase price signifies the price for a delivery of goods pursuant to a purchase contract or a work performance contract; the term of subject of delivery or machine refers to the subject of a purchase contract or a work performance contract.
- 1.3. If there is a contradiction between individual provisions hereof and those of the Agreement, the provisions contained in the Agreement shall prevail.
- 1.4. The Customer's different terms and conditions shall not be binding on the Supplier even if the Supplier accepts an order which contains the Customer's different terms and conditions unless both parties agree that the Customer's terms and conditions are binding upon the Supplier in a written agreement. If there is a contradiction between individual provisions of the Supplier's Terms and Conditions and the Customer's terms and conditions, the Supplier's Terms and Conditions shall prevail.
- 1.5. The Customer grants the Supplier consent to handle the Customer's personal details in order to execute and enforce the Supplier's claims ensuing from the Agreement and from these Terms and Conditions.
- 1.6. The Agreement shall be held concluded as soon as it has been signed by the Supplier and the Customer, as soon as the Supplier's offer has been confirmed in writing or as soon as the Customer accepts the Supplier's offer in writing.
The delivery of an email or fax message shall also be considered a form of confirming or accepting an offer in writing. The Supplier shall not use the commercial letter of confirmation pursuant to Section 1757, Par. 2 of the Civil Code.
- 1.7. The Supplier reserves ownership rights and copyright to samples, calculations of prices and costs, drawings and similar information of material and immaterial nature including its electronic form and requires that this information should not be disclosed to third persons (except leasing providers or subsidy funds with which the Customer intends to conclude an agreement; however, in such a case the Customer is required to notify the Supplier about this fact and to obtain a confirmation of financing or any other statement that substantiates this fact from the subject providing for the financing).
- 1.8. Both parties shall treat all information concerning the actual transaction that is not publicly accessible, especially information about prices, as confidential. In this context the Supplier shall also ensure that its employees or persons performing partial tasks in connection with the performance of the Agreement also observe the confidentiality of such information. The contracting parties have agreed that the party damaged by any violation of the obligations described in this section shall be entitled to claim a contractual penalty of CZK 50,000 for each violation hereof detected.

2. Price and Payment Terms

- 2.1. Unless expressly stipulated otherwise in the Agreement, the Supplier shall always state net prices, i.e. not including the VAT, incl. packing fees, transport fees and insurance policies for the respective point of delivery.
- 2.2. Unless expressly stipulated otherwise in the Agreement, the price shall be paid without any deductions to the Supplier's bank account in the following way:
 - 30% of the price shall be payable within ten days following the issuance of the advance payment invoice upon the Customer's order or, as the case may be, the Customer's confirmation of an order,
 - 60% of the price shall be payable within ten days following the issuance of the advance payment invoice upon the Supplier's notification that the subject of delivery is ready to be taken over or shipped;
 - 10% of the price shall be payable within fourteen days following the issuance of the invoice upon the commissioning of the machine.

The contracting parties shall sign a purchase contract which specifies the details of the particular transaction.
- 2.3. The Customer shall not be entitled to withhold payments or to use them to offset claims unless these claims have been acknowledged by the Supplier in writing or acknowledged by a relevant authority.
- 2.4. If the subject of the Agreement is financed by other means than the Customer's own resources (through lease, subsidies etc.), the Customer shall notify the Supplier about the actual institution that is supposed to finance the subject of the Agreement and shall also submit the financial institution's confirmation of allotting the financial resources necessary to cover the subject of the Agreement. If, eventually and for any reason whatsoever, the subject of the Agreement is not financed in the way described in this article, the Customer shall still be obliged to pay the purchase price using its own resources.

3. Delivery Terms

- 3.1. The particular delivery term is always specified in the Agreement. The Customer shall honour the delivery term provided that the contracting parties have clarified all commercial and technical issues and that the Customer has fulfilled all its obligations, e.g. to obtain official certificates and permits, to prepare the site for the installation and commissioning of machines (e.g. groundwork, power supply connections, air piping etc.), to pay advance payments specified by the Agreement (a payment shall be considered paid as soon as the entire outstanding amount has been put to the seller's account specified in the Agreement), etc. Otherwise, the delivery term shall be prolonged by one calendar week per each commenced week of the Customer's delayed performance of any of its obligations.
- 3.2. The Supplier shall honour the delivery term on condition that the Customer provides for its own deliveries in a due and timely manner and exerts maximum effort to cooperate. The Supplier shall not be liable for any delay, defect or failure to execute a delivery if these are caused by facts that the Supplier cannot influence.
- 3.3. The delivery time is deemed complied with if the goods to be delivered have left the supplier plant by the expiry of the delivery time and the customer has been notified of the readiness for dispatch. This also applies in the case that acceptance and approval of the goods are necessary. The delivery term shall be held honoured if the delivery leaves the Supplier's site or if the Supplier notifies the Customer that the delivery is ready for shipment before the period expires. This also applies to cases where takeover is stipulated.
- 3.4. If the shipment or takeover of the delivery is delayed for reasons caused by the Customer, the Supplier shall not be held delayed and the Customer shall compensate the Supplier for all related costs and damage.
- 3.5. Partial deliveries from the Supplier to the Customer are permissible.
- 3.6. If the Supplier does not honour the delivery term, the Customer shall not be entitled to claim compensation for damage.

4. Withdrawal from the Agreement, Withdrawal Fee

- 4.1. The Supplier may withdraw from the Agreement if any of the Customer's payments is delayed for more than ten days. In such a case, the Supplier may claim compensation for all costs related to the performance of the Agreement.
- 4.2. If the Customer fails to adhere to the payment terms and conditions specified in article 4.2, section b) of the Agreement, the Supplier may claim a contractual penalty equal to the amount of the first advance payment as per the Agreement.
- 4.3. The Customer may withdraw from the Agreement while the Agreement is in effect for any reason or without having to state any reason only if the Customer presents the Supplier with a written notice without any undue delay and pays the Supplier the withdrawal fee equal to:
 - 10 % of the stipulated purchase price of the machine including all additional services if the Customer withdraws from the Agreement no later than fourteen calendar days following the day when the Agreement was signed or any other binding order of the machine to which these Terms and Conditions apply;
 - 40 % of the stipulated purchase price of the machine including all additional services if the Customer withdraws from the Agreement no later than thirty calendar days following the day when the Agreement was signed or any other binding order of the machine to which these Terms and Conditions apply;
 - 50 % of the stipulated purchase price including all additional services and options included in the purchase price of the machine if the Customer withdraws from the Agreement after the Supplier has commenced manufacturing the subject of the Agreement;
 - 10 % of the stipulated purchase price if the Customer withdraws from the Agreement after the Supplier has completed the manufacture of the machine in the manufacturing plant; all options requested by the Customer shall be considered special additions to the basic design of the machine, its controls, mechanical capacity, mechanical tools and services, but shall not include commissioning, training in the operation of the machine, shipment or packaging.
- 4.4. In the case of a request for insolvency procedure in relation to the Customer before the transfer of the ownership right to the subject of the delivery to the Customer, the Supplier may withdraw from the Agreement and request immediate return of the subject of the delivery and payment of contractual penalty equal to 1 % of the purchase price for the subject of delivery.
- 4.5. If the Customer withdraws from the Agreement, the Customer shall compensate the Supplier for costs actually incurred in relation to the already implemented part of the subject of delivery.
- 4.6. The withdrawal from the Agreement shall become effective on the day the notice of the withdrawal is delivered to the other party; if the other party fails to receive the notice, the withdrawal shall become effective on the third day following the day when the written notice is stored at the post office. The notice shall be sent to the address specified in the heading of the Agreement.

5. Transfer of the Liability for Damage to the Things, Takeover

- 5.1. The liability for the damage to the things shall be transferred to the Customer at the moment the subject of the delivery leaves the site (this also applies to partial deliveries).

- 5.2. If the takeover is stipulated, it shall be performed immediately on the date specified or immediately after the Supplier notifies the Customer that the takeover is ready. The Customer shall not refuse to take over the machine if there is a defect that does not constitute a material violation of the Agreement by the Supplier. In the context of applicability of this provision the term of material violation caused by the Supplier refers to the existence of a defect preventing the operation of the machine.
- 5.3. If there is a delay of the shipment of the thing or takeover due to circumstances not caused by the Supplier, the liability for damage to the things shall be transferred to the Customer on the day when the Supplier notifies the Customer that the thing is ready for shipment or takeover.

6. Right to the Subject of Delivery, Ownership Right Reservation

- 6.1. The Supplier reserves the right to the subject of the Agreement until the Customer has paid the full purchase price.
- 6.2. The Customer shall insure the subject of delivery in the period from the takeover until the acquisition of the ownership right to the subject and shall do so at its own expenses; the insurance is required to cover the risk of loss caused by theft, damage, fire, floods and other damage, otherwise the Customer shall compensate the Supplier for damage caused by the failure to take out such insurance policy. The Customer shall inform the Supplier about the insurance of the subject of delivery in writing within three days following the day when the insurance policy is taken out and shall present the Supplier with a copy of the insurance policy. If the Customer fails to obtain such insurance, the Supplier may insure the subject of delivery at the Customer's expenses and to add the premium to the purchase price or include it in a special invoice.
- 6.3. If the Customer's actions violate the Agreement, mainly if the Customer fails to adhere to the payment conditions, the Supplier shall be entitled to send the Customer a notification about the retrieval of the subject of delivery (an email message is sufficient) and to retrieve the subject of delivery within three days after the delivery of the notification while the Customer shall return the subject of delivery and grant the Supplier access to the Customer's premises where the subject of delivery is located, otherwise the Supplier may claim that the Customer pay a one-off contractual penalty of 5 % of the purchase price. The application of the reservation of the ownership by the Supplier as well as retaining the subject of delivery by the Supplier shall be considered a withdrawal from the Agreement on the part of the Supplier.
- 6.4. The Customer shall not transfer the subject of the Agreement to a third person (or enable a third person to do so) until the purchase price has been paid in full or unless the Customer obtains a written consent from the Supplier. Otherwise, the Customer shall compensate the Supplier for any damage to the subject of delivery and, at the same time, shall pay a one-off contractual penalty for each case of such a transfer detected in the amount of 3 % of the purchase price for the subject of delivery.
- 6.5. In the case of the application of the retaining right or any other measures by third parties in relation to the subject of delivery before the purchase price has been paid in full the Customer shall notify the Supplier about this situation immediately and shall pay the Supplier a one-off contractual penalty for each case of retaining of the subject of delivery detected in the amount of 5 % of the purchase price of the subject of delivery.
- 6.6. **Reservation of ownership in the case of deliveries of higher investment or subcontracting units:**
 - 6.6.1. Processing or transforming the subject of delivery by the Customer before the ownership right to the thing has been transferred to the Customer is only possible upon obtaining the seller's prior consent. If the Customer does so without obtaining the Supplier's consent and if such a change decreases the value of the subject of delivery, the Customer shall compensate the Supplier for the damage caused by this fact or restore the original state of the subject of delivery, whichever the Supplier requests. If the value of the subject of delivery is increased and the Supplier grants consent with such a modification in retrospect, the modification shall be considered to have been made on behalf of the Supplier and the Supplier shall be deemed the owner. If the subject of delivery has other things added which are not the Supplier's property, the Supplier shall acquire a part of the ownership right to these things in the proportion of the value of the subject of delivery to the value of these added things at the moment of addition, otherwise the Customer shall compensate the Supplier for the damage caused by this addition. The thing created by the modification shall be owned by the Supplier and the reservation of the ownership right shall apply to it.
 - 6.6.2. If the subject of delivery is inseparably connected with other things which are not the Supplier's property, the Supplier shall acquire a part of the ownership right to these things in the proportion of the value of the subject of delivery to the value of the other connected things at the moment of the connection, otherwise the Customer shall compensate the Supplier for the damage caused by this connection. If the connection is of such nature that the Customer's thing is considered the main thing, the Customer shall transfer the respective part of the ownership right to the Supplier. The Customer shall exert due and proper care for the Supplier's ownership or share on the ownership rights arisen in this way.

7. Liability for Defects, Warranty, Complaints

- 7.1. The liability for defects shall be governed by relevant legal regulations. The Supplier shall be held liable for defects that the subject of delivery shows at the moment when the liability for damage to the thing is transferred from the Supplier to the Customer. The Supplier is also liable for defects occurring on the subject of delivery within the warranty period specified in the Agreement.

7.2. **Material defects of new subjects of deliveries in the warranty periods**

7.2.1. All components that demonstrate defects within 12 months from the delivery and these defects demonstrably existed on the thing at the moment when the liability for damage to the thing was transferred from the Supplier to the Customer shall be removed or replaced by the Supplier free of charge in an adequate period of time.

This provision shall only apply if the Customer notifies the Supplier about the defects in writing and within three days after the discovery of the defects. The replaced parts shall become the Supplier's property. If the defects are removable, the Customer shall only require the removal of the defect and shall not be entitled to withdraw from the Agreement or request a reduction of the purchase price as a consequence of the existence of such a defect.

7.2.2. The Customer shall provide necessary cooperation following the Supplier's prior notification about any necessary improvements, repairs and additional deliveries; otherwise the Supplier shall not be liable for any damage arising in this way. The Customer may only remove defects on its own or through third persons and claim that the Supplier pays compensation for necessary expenses if there is an urgent threat to the safety of operation or if the Customer intends to avert excessively high damage, of which the Customer shall notify the Supplier immediately.

7.2.3. The Supplier shall be liable for costs caused by the removal of defects acknowledged by the Supplier or by additional delivery within the warranty period and on the Customer's site.

7.2.4. The Customer may withdraw from the Agreement if the Supplier fails to commence the removal of defects for a period longer than 30 days following the notification of the defect which the Supplier acknowledged as justified.

7.2.5. If the defect cannot be removed, the Customer may only claim a reduction of the price. No reductions of the price are permissible in any other cases.

7.2.6. The Supplier shall not provide the warranty especially in the following cases: unsuitable, defective, inexpert or inadequate use of the subject of delivery, normal wear and tear, defective installation by the Customer, defective commissioning by the Customer or third parties, mainly by insufficiently qualified or trained staff of the Customer or a third party, normal wear and tear, incorrect or negligent handling, incorrect maintenance, unsuitable operating means, defective structural works, unsuitable location, chemical, electric-chemical or electric influences - unless the Supplier is responsible for these.

7.2.7. The Supplier shall not be held liable for the Customer's damage caused by a repair performed by the Customer or a third party. This also applies to modifications of the subject of delivery performed without obtaining the Supplier's prior consent.

7.3. **Special clause covering material defects of used subjects of delivery**

Reused subjects of delivery exclude any warranty for material defects. This does not apply to defects deliberately concealed by the Supplier.

7.4. **Legal defects**

7.4.1. If the use of the subject of the Agreement results in a breach of industrial rights or copyrights, the Supplier shall provide the Customer with the right to use the subject of the Agreement or shall modify the subject of the Agreement so that the use of it does not violate these rights; the Supplier shall do so at its own expenses.

If it is not possible for the Supplier under adequate economic conditions or within an adequate period of time, the Customer may withdraw from the Agreement without being entitled to any other claims under the Agreement.

7.4.2. The Supplier shall take measures as per the preceding stipulation only if

- the Customer immediately (within three days after discovering the situation) notifies the Supplier about the alleged breach of industrial rights or copyrights in writing;
- the Customer supports the Supplier's defence against any claims or enables the Supplier to adopt relevant measures,
- the Supplier is still reserved all measures for defence including the possibility to settle the situation outside court;
- the legal defects are not caused by the Customer's instructions or
- the breach of the right is not caused by the fact that the Customer unilaterally modified the subject of the Agreement or used it in a way contradictory to the Agreement.

7.4.3. The Customer's claims ensuing from the warranty shall become void in the case of all defects described above unless they are lodged in writing with the Supplier within the warranty period and immediately (within three days) after the defects occur on the subject of delivery.

8. **Liability for Loss**

8.1. The liability for loss shall be governed by relevant legal regulations.

8.2. The Supplier shall compensate the Customer for loss up to 5 % of the purchase price.

8.3. The Supplier shall not be liable for consequential and indirect loss.

8.4. Circumstances which exclude the Supplier's liability for loss are specified in Article 9 hereof.

9. **Force Majeure**

9.1. The Supplier shall not be held in default if this situation is demonstrably caused by force majeure. The term force majeure signifies natural disasters (e.g. deluge), accidents, lockouts, industrial action (even if it is notified in

advance), epidemics, labour law disputes and other exceptional circumstances which fulfil the conditions of Section 2913, Par. 2 and the following paragraphs of the Civil Code. The term force majeure does not include changes of a party's assets situation and changes in the economic or market situation.

- 9.2. If force majeure occurs, the parties shall adopt such measures that will enable them to continue performing their contractual obligations properly as soon as the consequences of the force majeure elapse and the parties shall agree on an adequate modification of the Agreement.
- 9.3. The party affected by the force majeure shall notify the other party about the occurrence and termination of the force majeure in writing and without any unnecessary delay. If this period is not adhered to, the contracting party may not refer to the force majeure.

10. Impossibility of Performance

If the Customer finds it impossible to perform the Agreement due to economic reasons, the Customer shall not be entitled to withdraw from the Agreement on these grounds in respect to the provisions of Section 2006 of the Civil Code or to claim that the obligations ensuing from the Agreement be declared void and shall remain bound by the Agreement in its full scope.

11. Force Majeure

- 11.1. If the subject of the Agreement includes software, the Customer shall be granted a non-exclusive licence to use the software including its documentation on the subject of the Agreement. The use of the software on more than one system is forbidden. The Customer may multiply, modify, translate and transfer the software from the target code to the source only in the extent permissible pursuant to the copyright law. The Customer shall not remove or modify the details of the manufacturer (and especially the statements regarding the copyright) without obtaining a prior explicit consent from the Supplier.
- 11.2. The Supplier or the supplier of the software shall retain all other rights to the software and the documentation including copies. It is forbidden to provide sub-licences.

12. Governing Law, Place of Settlement of Disputes

- 12.1. All legal relations between the Supplier and the Customer shall be governed by the Czech law, particularly by Act No. 89/2012 Coll., the Civil Code, as amended; in the case of purchase contracts the effects of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980, which was adopted in the Czech Republic as Act No. 160/1991 Coll., shall be excluded.
- 12.2. The relevant court shall be selected according to the registered office of the Supplier. However, the Supplier may also lodge an action at the relevant court selected according to the Customer's registered office.

Note: For the purposes of these Terms and Conditions the contracting parties may be referred to as follows:

- customer = buyer, client (but also user, contracting authority)
- supplier = seller, deliverer, manufacturer (but also provider, bidder)