

## **I. Scope, Data and Information**

**1. The following terms and conditions shall apply to all offers, deliveries and services performed by Unicut Wahl GmbH – herein thereafter referred to as „supplier“ – regarding installations and cooling, lubricating and cutting agents.**

**2. We herewith expressly object to any conditions on the part of the purchaser that deviate from or are contrary to our terms and conditions. They will only become an integral part of the contract, if the supplier has given express written consent.**

**3. Files made available to the purchaser via offers like figures, drawings, indications of weight and dimensions, performance and consumption details will only become an integral part of the contract, if this has been agreed explicitly upon order placement. Information made accessible to the purchaser by the supplier like drawings and other documentation are to be treated as confidential by the purchaser, unless they have been published or can be proved to have been known by the purchaser before being disclosed by the supplier. Such information may only be used by the purchaser as part of the purpose of the contract and for the intended use of the supplied item.**

## **II. Scope of Delivery**

**1. Collateral agreements and amendments shall require the supplier's written acknowledgement. A warranty of properties of the supplied item only exists if individual properties have been designated as warranted explicitly and separately.**

**2. The supplier reserves the right to modify the supplied item with regard to design and form insofar as the supplied item is not substantially altered thereby and the modifications are within an extent reasonable to the purchaser taking into consideration the purpose of the contract.**

## **III. Prices**

**1. Unless otherwise agreed the prices shall apply ex works, including loading at works and including packaging. The respective statutory level of Value Added Tax shall be added to the prices.**

**2. Unless agreed otherwise all work in connection with the installation or commissioning of the supplied item are not included in the price.**

## **IV. Payments and Warranties**

**1. In the absence of a special agreement, payment shall be made in cash without any deductions to the supplier's paying office within 14 days less 2 % cash discount or within 30 days net.**

**2. Withholding any payments or the setoff of any amounts by the purchaser is only permitted in the event of indisputable, legally established counterclaims or counterclaims that are ripe for adjudication.**

3. If, having agreed upon partial payments, the purchaser falls into arrears with an instalment longer than the due date of the next instalment, all remaining outstanding instalments shall fall due immediately. The residual debt will also fall due immediately, insofar as there are any bills of exchange pending with a later maturity date.

The supplier shall in this case – notwithstanding his rights arising from the retention of title - be entitled to withdraw from the contract or assert the right to damages on grounds of non-performance. Interest on arrears will be charged at 8 % p.a. above the respective basic interest rate (according to § 288 Abs. 2 BGB).

## V. Delivery

1. Unless otherwise agreed, delivery periods begin on the day the order comes into effect, however not before the purchaser has furnished all documents, authorizations, approvals to be provided as well as any stipulated down payment has been received.

2. Subject to any other agreement in an individual case, the delivery deadline is deemed to have been complied with when the supplied item has left the supplier's premises by expiry of said period or the purchaser has been notified that the supplied item is ready for shipment.

3. The delivery period shall be extended to a reasonable extent for measures taken in the context of industrial disputes, in particular in case of strikes and lockouts as well as if any unforeseen impediments arise, which are beyond the supplier's control, insofar as such impediments can be proven to have considerable impact on the completion or delivery of the supplied item. This shall also apply when such circumstances arise at any subcontractors. The supplier shall neither be liable for aforementioned circumstances, if they occur when performance has already been delayed. The supplier shall notify the purchaser as soon as possible about the beginning and cessation of such impediments.

4. The compliance with the delivery period requires the fulfilment of the contractual obligations of the purchaser.

5. If, after notification of the goods' readiness for shipment the purchaser is in arrears with accepting delivery of the contract object or meeting his payment obligations for more than 6 weeks, the supplier shall grant a period of grace of 14 days after which he shall be entitled to withdraw from the contract and/or to claim damages for non-fulfilment of contractual obligations.

If the supplier claims damages for non-fulfilment, he shall be entitled to demand 15 % of the sales prices as compensation. The compensation shall be higher or lower, if the supplier is able to furnish proof of higher damage or the purchaser is able to furnish proof of lower damage.

## VI. Transfer of Risk and Acceptance

1. The risk is transferred to the purchaser – unless expressly agreed otherwise - no later than at the time the purchased items are shipped, even in the event of partial deliveries

or if the supplier has assumed additional services e.g. dispatch costs, delivery and installation.

Upon request of the purchaser, the consignment will be insured against theft, breakage, transportation, fire and water damage as well as other insurable risks by the supplier at the purchaser's expense.

2. If dispatch is delayed due to circumstances that are in control of the purchaser, the risk shall be transferred to the purchaser from the day the goods are ready for dispatch; the supplier shall, however, take out the insurances requested by the purchaser at the cost of the latter.

3. Items supplied are to be accepted by the purchaser even if there is evidence of minor defects, without prejudice to the rights arising from section IX.

4. Unless otherwise agreed, partial deliveries shall be permissible, provided that they are reasonable for the purchaser.

## VII. Retention of Title

1. The supplier shall retain ownership of the supplied item until all claims of the supplier against the purchaser under the terms of the business relationship have been satisfied including any claims arising in future, as well as those arising from simultaneously or subsequently concluded contracts. This shall also apply if individual or all claims of the supplier have been incorporated in a current invoice and the balance has been determined and recognized. If the purchaser acts in a way contrary to the contractual obligations, in particular in the event of default of payment, the supplier shall be entitled to take back the supplied item following the issuance of a reminder and setting an appropriate deadline and the purchaser shall be obliged to surrender the goods. All costs incurred in connection with the repossession of the supplied item shall be born by the purchaser. The withdrawal as well as the seizure of the supplied item by the supplier shall only be deemed to constitute a withdrawal from the contract if expressly declared by the supplier. In case of seizures or other third party interventions, the purchaser must notify the supplier in writing without delay and give all necessary information and explanations.

The purchaser may neither pledge the supplied item nor transfer ownership of it as security before he – in accordance with the aforementioned – has acquired ownership of it.

2. If in the context of the payment of the purchase price by the purchaser liability under a bill of exchange of the supplier is substantiated, the retention of title including its agreed special forms and other securities which have been agreed to secure payment shall not lapse prior to collection of the bill of exchange by the purchaser as drawee.

3. The purchaser shall be entitled to resell the supplied item within the proper course of business. However, the purchaser shall here and now assign all claims to the supplier including all ancillary rights accruing to him against the buyer or any third party as a result of the resale, regardless of whether the goods subject to retention of title are resold without or subsequent to processing. The purchaser shall remain authorized to

collect said claims even after they have been assigned. This shall not affect the supplier's right to collect such receivables; the supplier shall, however, be obliged not to collect the claims as long as the purchaser complies with his payment obligations.

The supplier may demand that the purchaser discloses the assigned claims and their debtors, provides all information necessary for collection, hands over all documentation pertaining thereto and notifies the debtors of the assignment. If the supplied item is resold with other merchandise that does not belong to the supplier, the claim held by the purchaser against the customer shall be deemed to have been assigned in the amount of the purchase price agreed between supplier and purchaser.

4. The supplier undertakes to release the securities that he is entitled to insofar as the value of the securities exceeds the claim to be secured by more than 20 %.

### **VIII. Delivery and Installation**

1. The transport of the supplied item from the supplier's plant to the place of use shall be effected – unless expressly otherwise agreed – at the purchaser's costs and risk.

2. Should a delay or disruption in the transportation, erection, installation or commissioning of the supplied item due to reasons attributable to the purchaser occur or if the work of the fitter is being obstructed, the purchaser shall bear all additional costs arising from the delay, disruption or obstruction. The commitment to adhere to the agreed payment terms shall not be affected hereby.

3. The fitter may only perform work and services that go beyond the scope of delivery as per order confirmation and supply contract, if this has been commissioned especially on the part of the purchaser and only at an extra cost.

4. If the supplier has agreed to undertake the test run resp. test drive, normal business hours shall apply. If the fitter is engaged beyond the normal business hours, taking account of special circumstances, any additional hours will be invoiced separately as overtime.

5. The fitter is only allowed to work overtime if this has been expressly requested by the purchaser and confirmed in writing to the supplier and fitter. Overtime will be charged to the purchaser.

### **IX. Liability for Defects and Deficiencies in Goods**

The supplier shall be liable for delivery defects, which shall include the lack of expressly warranted properties with the exclusion of any further claims – however, without prejudice to section XI - as follows:

1. All those parts shall be repaired or replaced at the supplier's discretion, as it appears just, which – in particular due to deficiencies in design, bad materials or poor workmanship – within 12 months from delivery date and due to a root cause that existed prior to the transfer of risk turn out to be unusable or the use of which is materially impaired.

Apparent defects must be communicated to the supplier immediately in writing. Any replaced parts shall become the supplier's property.

2. No liability is assumed for damages caused by the following circumstances: Inappropriate or improper use, incorrect assembly resp. commissioning by the purchaser or any third party, installation of spare parts originating from other suppliers, normal wear, incorrect or negligent treatment, inappropriate operating materials and equipment, substitute materials used by the purchaser, deficient construction work at the purchaser's domain, unsuitable foundation, chemical, electrochemical or electrical impacts, unless they are attributable to the supplier.

3. In order to undertake the replacements and repairs deemed necessary by the supplier at his discretion, the purchaser, upon agreement with the supplier, shall notify the supplier and allow sufficient time and opportunity.

Only in urgent cases jeopardizing the operational safety and to prevent disproportionate damage - whereby the supplier must be notified immediately - or if the supplier is in default with the repair of the defect, the purchaser shall be entitled to carry out the repair himself or to have it repaired by a third party and demand reimbursement of the necessary costs from the supplier.

4. The supplier shall bear the immediate costs arising from the repair or the replacement, insofar as the complaint proves justifiable i.e. cost of the replacement part including dispatch as well as the reasonable costs for the disassembly of the defective part and the installation of the replacement; furthermore the costs for making the fitters and auxiliary staff available. For other, indirect costs and damages the limitation of liability in the following section IX.8 shall apply.

5. The supply of a replacement part and / or the repair shall not extend the original warranty period of the supplied item.

6. In the event of improper modification or commissioning work undertaken by the purchaser or any third party without prior consent of the supplier, there is no liability on the part of the supplier for any and all consequences arising.

7. The purchaser shall be entitled to withdraw from the contract when the complete performance or a material partial performance finally becomes impossible for the supplier before the transfer of risk. The same shall apply to inability of the supplier to render performance. The purchaser may also withdraw from the entire contract, if in the event of an order for similar items, execution of part of the delivery is impossible in terms of numerical quantity and the purchaser has a justified interest to refuse a partial delivery; if this is not the case, the purchaser may abate the consideration accordingly.

8. If performance default exists according to section V. of the General Terms and Conditions and if the purchaser grants the supplier in default an appropriate period of grace with the express declaration that upon the expiration of such period of grace he will refuse to accept performance and the period of grace is not adhered to, the purchaser shall be entitled to withdraw.

9. The purchaser shall furthermore have the right to withdraw from the contract when the supplier, after having been granted a reasonable period of grace for repair or replacement in conjunction with a defect he is responsible for as laid down in the General Terms and Conditions, lets said period of grace pass to no avail due to his own fault.

The purchaser's withdrawal right shall remain in force in case of the impossibility or inability on part of the supplier to repair or replace such faulty objects.

10. Further claims on the part of the purchaser, particularly any claims for compensation for damages that have not occurred to the supplied item itself are excluded. This exclusion of liability shall not apply in case of wilful intent or gross negligence of legal representatives, executive staff or vicarious agents of the supplier as well as in the event of culpable violation of material contractual obligations. In the event of culpable violation of material contractual obligations the supplier shall only be held liable for damages that are typical for the contract and are reasonably foreseeable except in cases of wilful intent or gross negligence on the part of legal representatives and executive staff. The exclusion of liability shall furthermore not apply in those cases in which the Product Liability Act stipulates that liability is in effect for defects in the supplied item causing injuries to persons or damages to objects in private use. Nor shall it apply in the case of absence of expressly warranted properties where such warranty was specifically given to protect the purchaser against damages that have not occurred to the supplied item itself.

#### **X. Liability for secondary Obligations**

If, as a result of fault on the part of the supplier the supplied item cannot be used by the purchaser according to the contract due to non-performance or faulty execution of proposals and consultations before or after contract conclusion or other contractual secondary obligations – particularly operating instructions and maintenance of the supplied item – the provisions of sections IX and XI shall apply accordingly.

#### **XI. Other Liability of the Supplier**

1. The supplier shall be liable, except in case of wilful intent or gross negligence, for any infringement of third party industrial property rights associated with the delivery or performance of the supplier excluding any further claims as follows.

The purchaser shall be exempt from any compensation or other expense claims imposed by final judgement and will be reimbursed with the legal fees disbursed. The warranty rights of the purchaser due to any material defect or deficiency in title due to any violation of property rights remains unaffected.

2. Any further claims of the purchaser, in particular those asking for compensation of damages of any kind, including such damages that have not occurred to the supplied item itself, shall be excluded.

**This exclusion of liability shall not apply to wilful intent, gross negligence on the part of legal representatives, executive staff or vicarious agents as well as culpable violation of cardinal contractual obligations. In the event of culpable violation of material contractual obligations the supplier shall be liable – except for cases of wilful intent and gross negligence of legal representatives or executive staff – only for damages that are typical for the contract and that are reasonably foreseeable.**

**The exclusion of liability shall furthermore not apply in those cases in which the German Product Liability Act stipulates that liability is in effect for defects in the supplied item causing injuries to persons or damages to objects in private use. Nor shall it apply in the case of absence of expressly warranted properties where such warranty was specifically given to protect the purchaser against damages that have not occurred to the supplied item itself.**

## **XII. Partial Ineffectiveness**

**Should any stipulation of these General Terms and Conditions be or become invalid, the validity of the remaining General Terms and Conditions as well as the contract as such will not be affected. The ineffective clause(s) shall be replaced by the statutory provision.**

## **XIII. Place of Fulfilment, Law and Place of Jurisdiction**

**Place of fulfilment is – unless otherwise agreed – the supplier's plant. For all disputes arising in connection with the contractual relationship – which also applies to legal action taken in document and bill of exchange procedures – the lawsuit shall be filed to the court which has jurisdiction in the place where the supplier has his principal place of business.**

**The supplier shall likewise be entitled to file a lawsuit at the purchaser's principal place of business. German law shall apply; these terms as well as the remaining contractual provisions between the contract parties shall be applied with precedence. The application of purchase rights regulations that have arisen based on international agreements (uniform purchase right or UN purchase right) shall be excluded.**