

## Terms & Conditions of Arthur Weissbach GmbH, Fulda, Germany

(Version 08/2021)

### **I General information**

1. Ancillary agreements and amendments shall require the written confirmation of Arthur Weissbach GmbH.
2. In principle, the Purchaser's terms and conditions, and internal guidelines, etc. shall not be accepted, even if they are not explicitly rejected and/or if we unconditionally supply in full knowledge of the Purchaser's contrary or deviating conditions. The same shall apply for any references to the Internet on the part of the Purchaser. Our Terms & Conditions shall apply as amended, also for all future goods and services for the Purchaser.
3. Arthur Weissbach GmbH reserves proprietary rights and copyrights to cost estimates, drawings and other documents. Cost estimates, drawings and other documents shall not be made accessible to third parties.
4. If contracts are drawn up in multiple languages, and they conflict with these Terms & Conditions in content, then with respect to the obligation, the following order of priority shall apply: a) German, b) English, c) all other languages

### **II Quotation**

Quotations of Arthur Weissbach GmbH, as well as delivery times and delivery possibilities shall be provided subject to alteration, unless expressly designated as binding. Illustrations, drawings, weight and dimension information are only approximate, unless expressly designated as exact.

#### **Purchase order**

With the purchase order the Purchaser bindingly declares that the Purchaser intends to purchase the ordered goods. We shall be entitled to accept the contract offer inherent in the purchase order within 2 weeks after receipt in our facilities. Acceptance may be declared either in writing, which shall also include notification via fax or remote data transmission, or through delivery of the goods to the Purchaser.

Any acceptance on our part shall occur subject to the condition that there are no legal impediments (such as export control regulations) that would prevent delivery.

### **III Scope of delivery**

The written order confirmation of Arthur Weissbach GmbH shall be authoritative for the scope of delivery. In the case of a binding offer from Arthur Weissbach GmbH with time commitment, and if a written order confirmation is not present, then timely acceptance of the offer shall be authoritative.

### **IV Price and payment**

If nothing to the contrary is agreed, the prices shall apply ex works, however exclusive of packaging, loading, and commissioning at the installation site. Sales tax at the applicable statutory rate shall be added to all prices.

1. Unless otherwise agreed in writing, payment shall be made before delivery, consisting of 40% advance payment, after receipt of the order confirmation / advance payment invoice and 60% before delivery with the final invoice.
  - 1.1 Payments shall be made in the currency that is specified in the order confirmation. Additional costs arise if the currency differs from the currency specified in the order acknowledgement. In this case, Arthur Weissbach GmbH shall be entitled to invoice these additional costs, as a rule 1.25%.
  - 1.2 Arthur Weissbach GmbH shall be entitled to apply the Purchaser's payments to the oldest outstanding invoice.
  - 1.3 If after entering into the contract, it becomes apparent that the claim to payment is at risk due to the Purchaser's inability to meet financial criteria, then we shall be entitled to demand payment for all outstanding invoices and to demand that the Purchaser either pay in partial amounts in exchange for delivery or provide security. If the Purchaser does not comply with such a request within a reasonable period of time, we shall be entitled to demand compensation for damages and to withdraw from the contract.
  - 1.4 Payments shall only be considered effected, when the amount is definitively available in one of the accounts we have specified.
2. Withholding payments or setting-off due to any counterclaims shall only be permitted with counterclaims that are undisputed or legally established.
3. If payments have been deferred or effected later than agreed, then Arthur Weissbach GmbH shall be entitled to invoice the Purchaser for the interim interest at the rate of 8% over the base lending rate of the Deutsche Bundesbank.

4. The following minimum quantity surcharges shall apply:  
€20.00 for domestic purchase orders with an invoiced value of goods under €50.00  
€30.00 for foreign purchase orders with an invoiced value of goods under €250.00

### **V. Delivery time**

1. The delivery time shall commence with receipt of the order confirmation, however not before fulfillment of all participatory obligations on the part of the Purchaser, particularly provision of the documents, permits, approvals that must be procured by the Purchaser, and receipt of agreed advance payments or after opening of a letter of credit.  
The delivery time shall be subject to the condition of timely self-delivery.
2. The delivery time shall be considered as complied with, if up to the expiration of the delivery time, the delivery item has left the plant or notification of readiness to dispatch has been sent.
3. We shall be entitled to postpone and/or cancel our delivery obligation in the event of force majeure, strike, lockout, proper or timely self-delivery does not occur or in the event of other operational disruptions of any type or difficulties in preliminary procurement and operating material procurement that occur retroactively with shipment or transport of the goods.
4. In such cases, if the impediment to delivery should last longer than 6 months, and we have not availed ourselves of the right to cancel the delivery obligation, then after expiration of an appropriate notification period and under exclusion of more extensive claims, the Purchaser shall be entitled to demand replacement, however maximum 3% of the values of the portion of the total delivery, unless we have offered an appropriate replacement solution.
5. Assertion of compensation for damages due to nonfulfillment, even in the event of withdrawal on the part of the Purchaser, shall be excluded, except for the conditions cited under V3, if the damage was not caused intentionally or through gross negligence.
6. If shipment is delayed on Purchaser's request, then the Purchaser shall be invoiced for the costs incurred for storage, starting from the date of notification of readiness to dispatch.  
However, Arthur Weissbach GmbH shall be entitled, after specifying a grace period fruitless expiration of an appropriate grace period, to otherwise dispose of the delivery item and to make delivery to the Purchaser with an appropriately extended delivery time.

### **VI Transfer of risk and receiving**

1. At the latest, risk shall transfer to the Purchaser with shipment of the delivery items, even if partial deliveries occur, or Arthur Weissbach GmbH has taken over other performances, such as the shipment costs or delivery and installation. On Purchaser's request, and at Purchaser's expense, the shipment shall be insured by Arthur Weissbach GmbH against theft, breakage, transport damage, fire and water damage, and other insurable risks.
2. If dispatch is delayed due to circumstances for which the Purchaser is responsible, then the risk shall transfer to the Purchaser starting from the date of readiness to dispatch; however Arthur Weissbach shall be obligated to effect the insurance coverage that the Purchaser demands, on the request and at the expense of the Purchaser.
3. Without prejudice to the rights arising from Section VIII, the Purchaser shall be obligated to receive the delivered items, even if there are apparent defects.
4. Partial deliveries shall be permitted.

### **VII Retention of title**

1. Arthur Weissbach GmbH shall retain title to the delivery item until all payments arising from the delivery contract shall be received. Resale of goods that have not yet been paid for, shall be prohibited. If the Purchaser shall nevertheless sell the item that has not yet been paid for, to a third party, then the Purchaser shall assign the Purchaser's receivables to Arthur Weissbach GmbH automatically. The third party must be informed of his obligation to pay Arthur Weissbach GmbH.
2. Machining and processing shall be performed for and on behalf of Arthur Weissbach GmbH excluding acquisition of ownership on the part of the Purchaser pursuant to Section 950 of the German Civil Code (BGB), without obligating Arthur Weissbach GmbH. The processed goods shall serve only as security for Arthur Weissbach GmbH in the amount of the invoice value of the retained goods. In the event of processing with other goods on the part of the Purchaser, Arthur Weissbach GmbH shall be entitled to co-ownership of the new item, in the ratio of the value of the retained goods to the invoice value of the other goods used. If ownership on the part of Arthur Weissbach GmbH ceases through the combination or mixing, then Purchaser shall now at this time, transfer to Arthur Weissbach GmbH the property rights to the new product or item to which the Purchaser is entitled, in the scope of the invoice value of the retained goods. The Purchaser shall hold the new product or item for Arthur Weissbach GmbH free of charge.

3. If payment is made through the cheque/bill of exchange procedure, Arthur Weissbach GmbH shall reserve ownership in the delivery item until liability, including a claim to bill of exchange enrichment on the part of the Purchaser, arising from the cheque / bill of exchange, ceases.
4. Arthur Weissbach GmbH shall be entitled to ensure the delivery item at Purchaser's expense against theft, breakage, fire damage, water damage and other damage, unless the Purchaser himself has verifiably taken out such insurance.
5. The Purchaser shall neither pledge the delivery item nor assign the delivery item for security. In the event of attachment, seizure or other dispositions through third-parties, the Purchaser shall be obligated to notify Arthur Weissbach GmbH of such circumstances without delay.  
The Purchaser shall bear all costs that must be paid for removal of such third-party access to our retained property and for re-procurement of the item, if these costs cannot be recovered from the third party.
6. In the event of behaviour on the part of the Purchaser that is contrary to the contract, in particular default of payment, Arthur Weissbach GmbH shall be entitled to take back the delivery item after giving notice and the Purchaser shall be obligated to surrender the delivery item. Assertion of retention of title and seizure of the delivery item on the part of Arthur Weissbach GmbH shall not be considered as withdrawal from the contract, insofar as the Installment Contract Law does not apply.
9. For essential third-party products the liability on the part of Arthur Weissbach GmbH relative to assignment of the liability claims against the supplier of the third party products to which Arthur Weissbach GmbH is entitled, shall be subsidiary.  
The Purchaser shall be obligated to first seek an out-of-court settlement with the third party.
10. Liability for defects shall be excluded for used machines.

#### **X Participatory obligations**

Immediately after delivery, the Purchaser shall be obligated to examine the goods with regard to identity, quantity, transport damage and apparent defects, and if a defect is determined, to immediately report the defect to Arthur Weissbach GmbH.

If the Purchaser does not provide such a report, then the goods shall be considered as accepted, unless a defect is involved that could not be detected at the examination. If such a defect is subsequently detected, then the report must be submitted without delay after discovery; otherwise the goods shall be considered as approved, even with regard to this defect. The Purchaser shall bear the burden of proof for all claim prerequisites, in particular for the defect itself, for the point in time the defect was detected and for timeliness of the notification of defect.

The Purchaser shall grant Arthur Weissbach GmbH the right, within 14 days after receipt of the goods in the Purchaser's facilities, to undertake an acceptance procedure, in which the contractually-specified properties of the machine are tested and confirmed. After concluding the acceptance procedure, the Parties shall prepare an acceptance protocol, in which compliance with the contract must be confirmed, i.e any defects must be recorded.

Other participatory obligations of the Purchaser are specified in the Installation Conditions of Arthur Weissbach GmbH (version 08/21 and in every case only the latest version shall be authoritative).

#### **VIII Goods receipt inspection, material defects**

Material defects are not properties of the goods or damage that occurs after transfer of risk due to improper handling, storage or failure to comply with handling guidelines, or properties of the goods or damage that occur due to force majeure, special external influences, which were not anticipated in the contract, or that occur due to use of the goods outside of the customary use or the use anticipated in the contract.

Claims for material defects shall not exist if the goods have been modified by the Purchaser or by a third party, unless there is no causality between the defect and such modifications.

Defects that only slightly reduce the value or suitability of the goods shall not constitute a material defect within the meaning of these Terms & Conditions.

#### **IX Liability for defects in delivery**

Arthur Weissbach GmbH shall be liable for defects in delivery as follows:

1. Claims for defects on the part of the Purchaser shall be statute-barred after expiry of 12 months after delivery of the goods.
2. If a defect is present within the period of limitation, and the cause was present at the time of transfer of risk, the Purchaser shall be entitled to demand elimination of the defect as supplementary fulfillment or delivery of an item that is free of defects.  
Determination of such defects shall be reported to Arthur Weissbach GmbH without delay.  
Arthur Weissbach GmbH shall be entitled to refuse the type of supplementary fulfillment selected by the Purchaser, if such type of supplementary fulfillment is only possible with disproportionate costs.  
In this case, the Purchaser's claim shall be limited to the other type of supplementary fulfillment.  
The right of Arthur Weissbach GmbH, to also refuse this type of supplementary fulfillment under the same prerequisites, shall remain unaffected.
3. Arthur Weissbach GmbH shall bear the expenses required for the purposes of supplementary fulfillment, in particular, costs for transport, road costs, labour costs and material costs.
4. Arthur Weissbach GmbH shall not be obligated to provide supplementary fulfillment, as long as the Purchaser does not pay a partial amount of the remuneration corresponding to the value of the defective performance.
5. Warranty shall be excluded for damage arising from the following causes: unsuitable or improper use, faulty installation or commissioning by the Purchaser or a third party, natural wear, faulty or negligent handling, unsuitable operating materials, unsuitable replacement materials, faulty construction work, an unsuitable building site, chemical influences, electromechanical or other electrical influences, insofar as these causes cannot be attributed to a fault on the part of Arthur Weissbach GmbH. Likewise, Arthur Weissbach GmbH shall only be liable for material defect, insofar as Arthur Weissbach GmbH should have detected the defect through due diligence.
6. If the Purchaser or a third party undertakes improper modifications or repair tasks on the delivery item, then Arthur Weissbach GmbH shall accept no liability whatsoever for the consequences that result.
7. The Purchaser shall allow Arthur Weissbach GmbH or a third party who is obligated to provide warranty, sufficient time and opportunity for the supplementary fulfillment.  
The Purchaser's right to eliminate the defect himself or have it eliminated by a third party and to demand reimbursement of the necessary costs, shall only be permitted in urgent cases where operational safety is in jeopardy and to prevent disproportionate further damage. In these cases Arthur Weissbach GmbH must be notified immediately.
8. Replaced parts shall become the property of Arthur Weissbach GmbH.

#### **XI Cancellation of the contract**

Contracts shall be binding for the Contracting Parties. If in the specific case Arthur Weissbach GmbH agrees to the Purchaser's cancellation request, then the settlement of Arthur Weissbach GmbH for the cancellation shall be calculated as follows:

1. 10% of the agreed purchase price, including all ancillary services on receipt of the order confirmation,
2. 30% of the agreed purchase price including all ancillary services 30 days after receipt of the order confirmation
3. 30% of the agreed purchase price, including all ancillary services with commencement of production of the respective machine plus the entire purchase price attributed to customer-specific options,
4. 100% of the agreed purchase price, including all ancillary services plus the entire purchase price attributed to customer-specific options after completion of the machine,  
whereby all special designs for the basic machine, the control system, the machine options, power tools and service, must be considered as customer-specific options, however commissioning, training, transport or packaging are not considered customer-specific options.  
On request, Arthur Weissbach GmbH shall notify the Purchaser of start of production and completion of the machine.  
On Purchaser's request Arthur Weissbach GmbH shall transfer and assign to the Purchaser parts, components and comparable fixtures, for which the Purchaser has paid the entire purchase price hereunto pertaining.  
The right to verify greater or lesser damage shall remain reserved.

#### **XII Withdrawal from the contract or reduction**

Supplementary fulfillment shall be considered as failed, if it is impossible, earnestly and definitively refused, delayed unreasonably or has been attempted to no avail.

Prior to withdrawal the Purchaser must always have specified to Arthur Weissbach GmbH an appropriate grace period for the performance or supplementary fulfillment without success.

Withdrawal shall be excluded if the breach of obligation is irrelevant.

Arthur Weissbach GmbH warrants that it will return the payments made within one month. Any and all more extensive claims against Arthur Weissbach GmbH shall be limited to a maximum of 5% of the order value.

If after entering into the purchase contract, Arthur Weissbach GmbH becomes aware that an attachment cannot be enforced with the Purchaser or if Arthur Weissbach GmbH obtains other indications of deterioration of Purchaser's assets, then Arthur Weissbach GmbH shall be entitled to demand security for counterperformance. If this does not succeed, then Arthur Weissbach GmbH shall be entitled to withdraw from the contract and set-off against any expenses Arthur Weissbach GmbH has incurred. This shall also apply if after solicitation the Purchaser does not meet Purchaser's payment obligations or ancillary obligations. Moreover, Arthur Weissbach GmbH shall have a claim for payment of a contractual penalty in the amount of 10% of the order value, however not to exceed a maximum of €25,000.

### **XIII Liability**

Claims for damages and reimbursement of expenditures incurred in vain within the meaning of § 284 of the German Commercial Code (BGB) shall be excluded, unless the damage is due to an intentional or grossly negligent breach of obligation on the part of Arthur Weissbach GmbH or its legal representative or a vicarious agent of Arthur Weissbach GmbH or for a warranty promise or procurement risk on the part of Arthur Weissbach GmbH. Liability for damages arising from wrongful death, personal injury or health impairment shall remain unaffected.

### **XIV Delivery of software also as a component of machines and systems**

1. In accordance with the state of technology it is not possible to develop computer software and control system software in such a manner that it works error-free in all applications and combinations. Consequently, as a rule the software delivered for fulfillment of the agreed machine function is fundamentally usable, there is no further warranty.
2. The liability of Arthur Weissbach GmbH is conclusively regulated in sections VIII to X; more extensive claims for damages shall be excluded.
3. The warranty shall end at the point in time at which the Purchaser changes or extends the program stored on the respective data carrier.
4. Arthur Weissbach GmbH is not the owner of all rights to all programs. Consequently, Arthur Weissbach GmbH grants to the Purchaser a temporally unlimited, non-transferrable and non-exclusive right to use the software only for the machine or systems cited in the respective contract. Therefore, use of the software on machines other than those delivered by Arthur Weissbach GmbH or third parties shall only be permitted after special written agreement with Arthur Weissbach GmbH. Transfer of the granted rights of use or granting of sublicenses shall not be permitted.
5. The Purchaser does not have the right to make copies of the software. Arthur Weissbach GmbH is prepared to transfer to the Purchaser a copy of the program stored on the respective data carrier; Arthur Weissbach GmbH shall make additional copies on request.
6. The Purchaser shall be obligated to not make software, including any type of copies, even in a version processed, extended or modified by the Purchaser, available to third parties without a temporal limitation. Third parties are defined as non-employees of the Purchaser or of Arthur Weissbach GmbH, as long as they are present in the Purchaser's facilities for contractual use of the software on behalf of the Purchaser.
7. All rights to the software, including all complete or partial copies of the machine-readable program made by the Purchaser, shall remain the property Arthur Weissbach GmbH – without prejudice to Purchaser's ownership of the data carrier. This shall also apply if the software has been modified or combined with other programs.  
Arthur Weissbach GmbH accepts no liability for any data losses or data changes due to faulty data carriers of the Purchaser, faulty or improper handling of the data carrier in the Purchaser's facilities, or for faulty or non-compatible data systems of the Purchaser or of third parties.

### **XV Legal status and place of jurisdiction**

The Parties hereby agree that the law of the Federal Republic of Germany shall apply exclusively to these Terms & Conditions and to all current and future legal relationships between Arthur Weissbach GmbH and the Purchaser, regardless of their nature. Application of the uniform international sales law and of the Vienna UNCITRAL Convention shall be excluded, even if the Purchaser's registered office is in a foreign country. If legally permitted, in particular if the Contracting Parties are merchants, Fulda, Germany shall be the exclusive place of jurisdiction for all present and future disputes arising directly and indirectly from the contractual relationship, and all other business relationships and legal relationships between the Contracting Parties.

### **XVI Installation and commissioning**

Our separate Installation Conditions shall apply in addition for installation and commissioning in the Purchaser's plant. Costs shall be invoiced in accordance with the Installation Conditions applicable at the time of delivery.

### **XVII Repairs, conversions, overhauls and buyback**

1. If machines are delivered in an uncleaned state, Arthur Weissbach GmbH reserves the right to invoice for the cleaning.
2. If when the contract is entered into, the Purchaser does not expressly request handover of the parts to be replaced for tasks on machines or systems, these parts shall be disposed of.

### **XVIII Sample materials**

Sample materials shall be sent to us and made available to us free of charge. The quantity of required samples shall be specified beforehand, however samples shall be required in sufficient quantity for initial commissioning in the

facilities of Arthur Weissbach GmbH. If the quantity is insufficient, Arthur Weissbach GmbH shall not accept responsibility for the non-tested functions of the machine/system.

Expenses for the disposal or return shipment of sample materials (waxes, cardboard packaging, etc.) shall be borne by the Purchaser.

### **XIX Labeling of the machine, menu navigation and documentation**

Labelling of the machine, menu navigation and documentation shall be provided in the desired European language.

In all other countries, labelling of the machine, menu navigation and documentation shall only be provided in English, or in the desired language for an additional charge.

The documentation of integrated machines from other manufacturers, as well as installed vendor parts shall always be provided in German or English.

If translation into the national language should be required in this regard, these costs shall be invoiced separately.

### **XX Invalidity**

If a specific provision in these Terms & Conditions or as part of the other contractual agreements is invalid or becomes invalid, then the effectiveness of all other provisions shall remain hereby unaffected. In this case the Contracting Parties shall replace the invalid provision with a different provision based on the purpose of its stipulation.