

# TERMS OF SALE OF VHF CAMFACTURE AG



## 1. Scope

All and any of our quotations, deliveries or other services are exclusively subject to the terms and conditions stated below in the most current amended version. Our terms of sale shall also apply to all future business. Any general terms and conditions of contracting parties that have not been accepted by us expressly and in writing shall not be valid. Our terms of sale shall apply even if we make delivery to the contracting party without any reservation, although we had knowledge of terms of the contracting party standing contrary to or deviating from our own terms. Unless specifically stated otherwise, the legal provisions shall apply. Amendments or supplements to these terms and conditions must be made in writing. Any and all oral agreements shall be immediately confirmed in detail and in writing by the contracting parties. Our terms of sale shall only apply with respect to companies within the meaning of Section 310(1) of the German Civil Code [BGB].

## 2. Quotations

- a. Our quotations shall be subject to change and non-binding for us. Inquiries from contracting parties that are not contained in an order or order confirmation shall not be binding for us.
- b. If any quotation or order confirmation is based on documents, such as images, drawings, etc., such documents shall be deemed non-binding. We reserve the right of ownership and copyright to any and all of these documents. These documents must not be made available nor disclosed to third parties without our prior written consent. Stated dimensions or weights shall be deemed approximate in line with the industry standards, unless we have expressly identified them as binding.

## 3. Conclusion of contract and scope of delivery

- a. If a quotation on our part leads to an order on the part of the contracting party, the contract shall not come into effect until we have confirmed the order in writing. The scope and content of the performance owed shall be solely as specified in the order confirmation. If an order on the part of the contracting party does not lead to an order confirmation on our part, in the case of tools or consumables for example, the contract shall come into effect when we execute the order. In this case, the scope and content of the performance owed shall be as specified in the item description in the current vhf catalogues. If an item is not listed in the catalogues and a delivery is nonetheless made without an order confirmation, the scope and content of the performance owed shall be as specified in the written order.
- b. We shall be entitled to technically change or modify the delivery items to the extent that this does not contradict the specifications in the order confirmation.

## 4. Prices and terms of payment

- a. Unless specifically agreed otherwise in the order confirmation, our prices shall be deemed ex

works, denominated in euros, excluding packaging, freight, transfer, postal charges, insurance, customs duties and any relevant statutory value added tax.

- b. Insofar as no fixed price is agreed, the prices in our current price lists shall apply. The prices specified therein shall apply provided that our terms of sale are unconditionally accepted by the contracting party.
- c. The minimum order value for deliveries within Germany shall be EUR 75; otherwise, we shall be entitled to make a surcharge for small quantities of EUR 7.50. In the case of deliveries in the EU and Switzerland, there shall be a minimum order value of EUR 150; outside these countries, the minimum order value shall be EUR 300, with the surcharge for small quantities amounting to EUR 15 (EU and Switzerland) and EUR 30 (worldwide). Unless otherwise agreed, deliveries abroad shall only be made against cash in advance or payment by credit card.
- d. Unless otherwise agreed, invoices shall be payable within 30 days of the invoice date. Bills of exchange and cheques shall only be accepted by agreement and on condition that they can be discounted. Bill of exchange and discount charges shall be borne by the contracting party. Payments shall only be deemed effected when they are conclusively credited to our account.
- e. If, after the conclusion of the contract, it becomes evident that our payment claim is jeopardised through the contracting party's insufficient financial capacity, we can refuse performance and set the contracting party an appropriate period of time in which it has to pay one-for-one in return for delivery or to provide security. In the case of refusal by the contracting party or if the period of time expires, we shall be entitled to withdraw from the contract and demand compensation.
- f. In case of delay in payment, we shall be entitled to demand interest in the amount of 8 percentage points above the respective base rate. This does not affect our right to claim further damages for delay.
- g. The contracting party may offset claims against amounts due and payable to us only if such claims are undisputed or are based on a final, non-appealable award by a court of law. The contracting party shall be entitled to exercise a right of retention to the extent that its counterclaim is based on the same contractual relationship. The contracting party shall have no right of retention for partial deliveries as provided under Section 320(2) of the German Civil Code [BGB].

## 5. Deliveries

- a. Delivery dates and times shall always be estimated and non-binding for us, unless a delivery date is expressly agreed in writing. The conclusion of the contract shall be subject to punctual delivery to us by our suppliers. This shall not apply if we are responsible for non-delivery, in particular if we have failed to enter into a congruent covering transaction. We shall inform the contracting party immediately of the non-availability of the goods and reimburse the contracting party for any amounts already paid.
- b. The date of delivery shall be calculated from the date of the order confirmation or, if advance payments have been agreed, when we have received them. Periods of delivery and delivery

dates shall be deemed complied with if, by their expiry, the delivery item has left our plant or the contracting party has been notified of readiness for dispatch in writing.

- c. The date of delivery or deadlines shall be extended accordingly if the contracting party delays or fails to take required or agreed cooperative action. The same shall apply in the case of force majeure and all other obstacles over which we have no control and which have a significant effect on delivery or performance, especially strikes and lockouts at our premises or those of our suppliers or their subcontractors. If the aforementioned circumstances make delivery or performance impossible or unreasonable, we shall be discharged from our delivery obligation. If the date of delivery is extended or if we are discharged from our delivery obligation, the contracting party cannot derive any claims for damages from this.
- d. Unless otherwise agreed, changes to the order shall render any agreed dates and periods null and void. If the contracting party demands changes or amendments to the order after conclusion of the contract, which make it impossible to meet the delivery deadline, the deadline shall be extended accordingly for a period that is appropriate for implementing such changes or amendments.
- e. For additional deliveries, we shall have a right of retention until all and any prior deliveries are paid for.
- f. We shall be entitled to make partial deliveries and to invoice them separately.

## 6. Dispatch and transfer of risk

- a. In the absence of a special agreement, we shall select the method of shipment and the shipping route at our discretion. At the contracting party's request, the delivery item will be insured for transport. The costs of shipment, standard packaging and transport insurance shall be borne by the contracting party.
- b. Goods that have been declared ready for delivery shall be accepted immediately by the contracting party; otherwise, we shall be entitled to dispatch them and/or to store them at the cost and risk of the contracting party at our sole discretion.
- c. Risk shall be transferred to the contracting party when the delivery item is passed to the railway, carrier, shipper or haulier and other miscellaneous dispatch agents, or on notification of readiness for dispatch, and at the latest when it leaves the factory or storage, including where we have assumed delivery. Dispatch shall always be executed on the instructions of the contracting party.
- d. The contracting party shall also accept a delivery item if it exhibits insignificant deviations in quality or slight impairment of the usability.
- e. If dispatch is delayed at the purchaser's request, the resulting storage costs can be charged to the contracting party.
- f. Should we agree to take back an ordered and properly delivered item, we shall be entitled to charge a reasonable fee for returning the item to storage. We shall only take back items, such as tools or consumables, that are in a proper, saleable condition. Specially manufactured items or special orders, including complete CNC milling machines, shall not be taken back. When the item has been taken back, the pur-

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chase shall receive a credit note for the value of the item, after deduction of the re-storage fee. This cannot be redeemed in cash but will be offset against future purchases or orders.

## 7. Installation and assembly

- a. Installation, assembly and commissioning shall only be performed by us on written agreement. Unless otherwise agreed, the purchaser shall be personally responsible for this.
- b. Insofar as we are responsible for the installation, assembly and commissioning of complete CNC milling machines, in order to ensure trouble-free delivery and installation, we shall send, in good time prior to delivery, an information memo setting out all necessary conditions (required floor space and passage width, requirements to be met by the installation location, the need for a forklift for unloading, etc.). The purchaser must ensure that all named requirements are met in full prior to delivery. Unless otherwise agreed, the contracting party shall bear the costs of installation, assembly and commissioning, including freight costs in accordance with our valid rates and price lists.
- c. Insofar as we are responsible for installation and assembly, the risk shall pass to the purchaser on the day of handover at the purchaser's premises or, if a test run has been agreed, after a successful test run.

## 8. Delay in delivery and impossibility

- a. In the event of delay in delivery, withdrawal from the contract instead of performance shall also require that the contracting party has set a reasonable period of time for the performance of the contractually owed obligation accompanied by a threat of refusal to accept performance by letter. The period of time shall be at least 25 % of the agreed or specified delivery period, but shall not be less than 14 days. After the expiry of this period of time and following a request on our part, the contracting party shall declare whether it is their intention to continue to insist on the delivery or to withdraw from the contract. The contracting party shall not be entitled to refuse to take delivery or withdraw from the contract instead of performance, if we have set a reasonable deadline requesting a certain declaration and the contracting party has not made such a declaration.
- b. In case of impossibility of, or delay in, fulfilling our obligation to perform, the contracting party shall be entitled to withdraw from the contract only if such a breach is caused by and attributable to us.
- c. The contracting party shall not be entitled to withdraw from the contract prior to the due date of any performance or in case of an only minor breach of the contract on our part. Withdrawal from the contract shall be excluded if the contracting party is solely responsible or responsible to a large extent for the events that would have entitled the contracting party to withdraw, or if an event occurs which is beyond our control while at the same time the purchaser is in default because they did not accept the goods.

## 9. Rights in the software

- a. Our software (program and user manual) is legally protected. All rights to the software as well as to other objects which we provide or make available to the purchaser within the framework of the initiation and performance of the contract shall remain our exclusive property. If the rights belong to third parties, we shall have the corresponding exploitation rights.
- b. The purchaser shall receive a simple, spatially and temporally unlimited, non-exclusive right to use the software. Unless agreed otherwise, the software may only be used with the hardware supplied by us or, if the purchaser uses it with their own hardware, it must be used on a single computer.
- c. In addition, as regards the rights of use, the compulsory provisions of the German Copyright Act (Section 69(a) et seq. UrhG) shall also apply.
- d. The purchaser shall receive the software, consisting of the machine program and the user manual. Unless agreed otherwise, programs and the manual shall be supplied on CD-ROM. The purchaser shall have no rights to the surrender or delivery of the source code.

## 10. Defects

- a. The properties of the delivery items shall be exclusively as specified in the order confirmation or, in the event that delivery is made without order confirmation, in the item description in the current vhf catalogues. If a delivery item is not listed in the catalogues and a delivery is nonetheless made without an order confirmation, the scope and content of the performance owed shall be as specified in the written order. The contracting party shall bear the risk of the delivery items being suitable for the purpose envisaged and of their compatibility with other components or systems. The condition of the delivery items at the time the risk is transferred shall alone be decisive for the contractual condition of the delivery items.
- b. We shall, in particular, not be liable for any malfunction and/or damage caused by inappropriate or improper use or operation, defective assembly and/or commissioning by the contracting party or a third party, incompatibility with other systems or modules, customary wear and tear, faulty or negligent handling, or for the consequences of incorrect changes or repairs carried out by the contracting party or third parties without our authorisation. The contracting party shall be responsible for data security.
- c. Legal defects or material defects, the absence of one of the guaranteed characteristics of the delivery item (hereinafter: defect), as well as over-delivery, under-delivery or incorrect delivery (hereinafter: deviations) shall be reported in writing immediately and within two weeks of receipt of the delivery item at the latest in the case of deviations or externally visible defects. Defects that are not obvious shall be reported in writing by the contracting party as soon as they are discovered. If deviations or defects are not reported within the aforementioned time limits, claims against us for defects shall be excluded.
- d. If a defect or deviation is reported in a timely manner, the contracting party shall, at our discretion, be entitled to supplementary per-

formance in the form of rectification of defects or replacement. The necessary costs resulting herefrom, such as labour, transport, travel and material costs, shall be borne by us provided they are necessary to remedy the defect and do not increase as a result of the delivery item being taken to a place other than the place of delivery, unless this corresponds to its intended use. If no defects are identified, we shall be entitled to pass on the costs of the investigation in accordance with our remuneration rates, including freight costs.

- e. Following consultation, the contracting party shall give us the necessary time and opportunity to be able to effect rectification of defects or replacement. The contracting party shall be obliged to send us, in writing, an accurate and comprehensive description of all defects or malfunctions and support us in the analysis of faults and removal of defects. We shall have the right to make the statutory number of attempts at remedial action. Due to the complexity of software, under certain circumstances, several attempts at remedial action may be necessary.
- f. We shall be entitled to take remedial action in accordance with our warranty conditions set out in Section 11 below. The contracting party shall, in any event, send us the defective components free of charge if requested to do so. In this case, we shall remedy the defect by sending a component that is free of defects to the contracting party free of charge. If the defect cannot be remedied in this way, remedial action shall be taken by a service technician on site. We shall also be entitled to remedy software defects through the remote transfer of data and through the installation of patches or alternative program parts. The contracting party shall be required to accept a new program version or a previous program version that is equivalent to the original version and does not contain the error, if this is considered reasonable and appropriate. We shall bear no liability whatsoever if the contracting party rejects these options.
- g. If repair or replacement is unsuccessful, the contracting party shall be entitled to reduce the payment due to us and, in the event of not inconsiderable breach of duty, to withdraw from the contract and/or assert claims for compensation pursuant to Section 12 below.
- h. Claims arising from a defect shall expire twelve months after the delivery item has been handed over. This shall not apply if longer periods are required by law. Nor shall this apply in the case of claims for damages and for reimbursement of expenditure aimed at compensation for personal injury or impairment of health or based on intent or gross negligence or under warranties issued by us, in particular pursuant to Section 11 below.

## 11. Warranty for CNC milling machines

We shall issue our contracting parties with a warranty for the sale of complete CNC milling machines in accordance with a separate agreement. The details shall be contained in the warranty. However, there shall be no entitlement to the issuance of a warranty.

## 12. Liability

- a. We shall be liable without limitation in accord-

ance with the law for intent and gross negligence and also in accordance with the relevant provisions of the German Product Liability Act.

- b. We shall be liable without limitation in the event of intent, gross negligence, the absence of a guaranteed characteristic, for personal injury and in accordance with the German Product Liability Act. In the event of slightly negligent breach of material contractual obligations (including punctual and defect-free delivery), our liability shall be limited to the foreseeable damage typically occurring under this type of contract. Our liability for slightly negligent breach of non-material contractual obligations shall be excluded. These provisions shall apply accordingly in relation to our liability for reimbursement of wasted expenditure.

In determining the quantum of the claims for damages to be fulfilled by us, our economic situation, the type, scope and duration of the business relationship, any possible contribution to the cause or fault on the part of the contracting party pursuant to Section 254 of the German Civil Code [BGB] and an especially unfavourable assembly situation of the delivery item shall be taken into appropriate consideration to our benefit. In particular, the amount of compensation, costs and expenses to be borne by us must be reasonably proportional to the value of the delivery items.

- c. The foregoing provision shall also apply to our legal representatives, employees and vicarious agents.

### 13. Retention of title

- a. We reserve title to the delivery item (goods under retention of title) until all our claims out of the business relationship between us and the contracting party are paid in full.
- b. Any processing or alteration of the delivery items by the contracting party shall always be done in our name. If the delivery item is processed together with other objects not belonging to us, we shall take partial ownership in the new object based on the ratio of the value of the delivery item to that of the other processed objects at the time of processing. If the delivery item is inseparably mixed with other objects not belonging to us, we shall assess the partial ownership in the new object based on the ratio of the value of the delivery item to that of the other intermixed objects at the time of intermixing. If the intermixing is of the type that the contracting party's object is deemed the main object, the contracting party shall transfer title to us proportionately. The contracting party shall store for us the so produced sole or joint property. Otherwise, the same shall apply for new items resulting from processing, joining or intermixing that applies for goods under retention of title.
- c. The resale of goods under retention of title as well as their attachment or assignment as security shall not be permitted without our prior written consent. In case the goods under retention of title are nonetheless sold, the contracting party shall assign to us the claim against the purchaser arising out of the resale.
- d. The contracting party shall notify us immediately in writing in the event of attachment or other acts of possession by third parties so that we can file an action pursuant to Section 771 of the German Code of Civil Procedure [ZPO].

Should the third party be unable to reimburse our legitimate judicial and extra-judicial expenses which arise from this action, the contracting party shall be liable for the loss incurred by us.

- e. If the respective laws of the jurisdiction in which the delivery item is located do not allow a retention of title, we shall be entitled to exercise all other rights to the delivery item that we may have reserved. The contracting party is obligated to cooperate with us in all and any measures we may take to protect our title or any other security interests in the delivery item instead.
- f. The rights to use the software supplied by us shall pass to the purchaser on full payment of the contractual remuneration. Prior to that, the purchaser shall only have a temporary, contractual, revocable right of use. The rights of use shall be deemed revoked with the exercise of the reservation of ownership.
- g. We shall undertake to release goods under retention of title as well as assigned claims insofar as the security value of the goods under retention of title and the assigned claims exceeds our claims. The security value shall correspond to the amount of the purchase price minus 10 per cent for any resale losses and costs. Release shall be effected by transfer of ownership and/or re-assignment.

### 14. Infringement of intellectual property rights

The purchaser shall inform us immediately in writing should a third party assert protective rights to the delivery items against them. In this case, the purchaser shall authorise us to conduct any and all disputes with the third party alone. For as long as we make use of this authorisation, the purchaser shall be prohibited from acknowledging the claims of the third party without our consent; we shall mount a defence against such third-party claims at our own cost and indemnify the purchaser against all costs associated with the defence of these claims, provided they are not caused by a breach of duty on the part of the purchaser (e.g. improper use).

### 15. Confidentiality

- a. The contracting party shall undertake to keep the information, documents, software, etc. it has received prior to or during the performance of the contract in the strictest confidence as business and trade secrets and not to make them accessible to third parties.
- b. We shall process the necessary data of the contracting party that is relevant for business transactions with due consideration of the data protection regulations.

### 16. Delivery abroad

- a. If the products are exported, the contracting party shall comply with the German export regulations and shall make its customers aware that, in the event of export, the German export regulations shall apply.
- b. If, at the request of the contracting party, deliveries are exported duty free, they shall be liable towards us for any subsequent demands by the customs administration and shall indemnify us against such claims.

### 17. Place of performance | Place of jurisdiction | Applicable law | Severability clause

- a. The place of performance and place of jurisdiction for all obligations directly or indirectly arising from the contractual relationship shall be our registered place of business in 72119 Ammerbuch, Germany. We shall also be entitled to sue the contracting party at its registered place of business.
- b. The laws of the Federal Republic of Germany shall apply, excluding the rules on the conflict of laws and excluding the UN Convention on Contracts for the International Sale of Goods (CISG).
- c. Rights arising under this contract may only be transferred to a third party by the purchaser and by us by mutual agreement.
- d. If one or more of the provisions of these terms and conditions is or becomes invalid, this shall not affect the validity of the remaining provisions hereof. The contracting parties shall then replace the invalid provision with one whose economic effect is as close as possible to that of the invalid one.

### 18. Language

These terms of sale are issued in German and in English. In cases of doubt, the German wording shall prevail.

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