



## General Terms and Conditions of Sale of AMAZONEN-WERKE H. DREYER SE & Co. KG and BBG Bodenbearbeitungsgeräte Leipzig GmbH & Co. KG and AMAZONE S.A. Forbach

### § 1 Scope of application

- 1.1 Our Terms and Conditions of Sale apply exclusively; we do not recognise terms of the Buyer that conflict with or deviate from our terms and conditions, unless we have expressly consented in writing to their application. Our Terms and Conditions of Sale shall also apply if we make delivery to the Customer without reservation despite having knowledge of conflicting or contrary terms of the Buyer.
- 1.2 Our terms and conditions only apply in relations with entrepreneurs within the meaning of Section 310 of the German Civil Code (BGB).
- 1.3 Our Terms and Conditions of Sale apply as amended as a framework agreement also for all future transactions of the same kind with the Buyer even if we do not refer to them in a specific case; in this case, we will inform the Buyer without undue delay of any amendment.

### § 2 Offer- Prices - Payment terms

- 2.1 Our offers are non-binding, unless the offer exceptionally expresses the legal intention to be so bound. A contract is only concluded with our order confirmation and only on the basis of the terms confirmed by us in writing.
- 2.2 When the product configurator is used, the following provisions apply as well:
  - 221 With the product configurator, the Buyer is able to submit a tailored offer for the configured product on the webpage "Dealer Terms". Once we have received this purchase offer, the buyer receives an order confirmation, usually by email. With this confirmation of the receipt of the order, no sale contract is concluded as yet. The sale contract is concluded only after an examination of the order by means of a separate order confirmation and only on the basis of the terms confirmed by us in writing. IF the Buyer does not receive an order confirmation, the offer of the Buyer is deemed to have been rejected.
  - 222 With the product configurator, a Buyer is also able to submit on the webpage "Customer Terms" an offer in regard to the configured product for their own end customer. The data and information entered there have no impact on the contractual relationship between us and the Buyer. Thus the Buyer alone is responsible for complying with the data protection laws, in particular for ensuring that they have permission to collect, process and use the data entered there.
- 2.3 Our prices are exclusive of value-added tax for the delivery from the factory. In principle, we are entitled to increase the agreed price if the costs for raw materials, energy, wages and salaries, freight custom duties, expenses, etc. increase between the confirmation of the order and delivery, thus increasing the cost for the delivery. A price increase must be notified in advance to the Buyer; the Buyer is entitled to object to the price increase within seven days after receipt of the notification. In case of an objection, we shall have a choice between withdrawal from the contract or delivery at the originally agreed price. We shall announce the Buyer without undue delay of our decision. If we opt for withdrawal, any further claims of the Buyer shall be excluded.
- 2.4 Unless otherwise agreed in the order confirmation, payment is due immediately. Any agreed early payment discount for new invoices is excluded as long as older, due invoices have not yet been settled. The date of payment shall be date on which we are able to dispose of the received amount. If down payments or advance payments have been agreed, statutory value-added tax is also due on the down payment or advance payment.
- 2.5 For payments in the SEPA Direct Debit procedure, the Buyer must issue us a SEPA company debit order. The direct debit order will be collected 10 days after the invoice date. The deadline for the pre-notification is reduced to 1 day. The Buyer shall ensure that the account is covered for the amount. Costs that are generated by the failure to honour or reversal of the debit order shall be charged to the Buyer, provided that the costs failure to honour or reverse the debit order have not been caused by us.
- 2.6 The Contracting Parties may have agreed that the Buyer should open a letter of credit through their bank (or any other for us acceptable [other] bank). In this case, the letter of credit must be opened in accordance with the Uniform Customs and Practice for Documentary Credits, Revision 2007, ICC Publication No. 600 ("ERA").
- 2.7 The Buyer is entitled to set off or exercise a right of retention only if their counterclaims have been defined with binding legal effect, are uncontested or acknowledged by us, or if a consideration resulting from the contractual relationship is concerned, in particular in connection with a counterclaim that results from a claim for an allowance in kind that gives rise to a right to refuse performance. The Buyer is only entitled to exercise a right of retention if their counterclaim is based on the same contractual relationship.
- 2.8 Subsequent modifications or supplements to the order or of the essential order results must be documented in writing and confirmed by both parties. If this results in a change in the costs or to the time schedule, we will transmit a revised order confirmation, detailing the changes in the costs dates, to the Buyer within 10 working days. If the Buyer does not reject the changes within 10 working days, the changes required by the Buyer and the resulting changes in the costs and timing shall be deemed to have been agreed.



- 2.9 In the event of a failure to accept ordered machines, we reserve the right to charge a cancellation fee in the amount of the damage incurred by us.

## § 3 Delivery and performance

- 3.1 Compliance with all our delivery and performance obligations requires the timely and proper performance of the obligations of the Buyer and clarification of all technical questions.
- 3.2 Unless otherwise agreed, the shipped item is shipped at the risk and expense of the Buyer. If the Buyer so wishes, we will cover the delivery with a transport insurance; the costs incurred as a result shall be borne by the Buyer.
- 3.3 Partial deliveries are permitted if:
- 3.3.1 the Buyer is able to use the partial delivery in the context of the contractually intended use,
- 3.3.2 delivery of the remainder of the ordered shipment is ensured and
- 3.3.3 the partial delivery does not cause substantial additional work or expense for the Buyer (unless we agree to assume these costs).
- 3.4 Standard deviations of the shipped item from the order confirmations, offers, samples, brochures, data sheets, trial runs and advance deliveries are only permitted in accordance with the respective applicable DIN/EN standards or other applicable technical standards.
- 3.5 Shipped items that are part of properly executed deliveries can only be returned if we approve the return of the goods. In this case, the Buyer shall bear the costs of the returned shipment.
- 3.6 Force Majeure, regulatory conditions imposed and other circumstances for which we are not responsible, in particular transport and production breakdowns, industrial disputes, material shortage, fire damage, war or a state of emergency or other cases of force majeure, suspend our obligation of delivery and performance for the duration of their effects. We are entitled to withdraw from the contract if for the aforementioned reasons, we can no longer be reasonably expected to fulfil the contract. Under these circumstances, any claims for compensation against us shall be excluded.
- 3.7 In case of impossibility or delay of performance, we shall be liable in accordance with statutory provisions, provided the impossibility or delay is caused by intent or gross negligence on our part, including intent or gross negligence on the part of our authorised representatives or persons used by us to perform our obligations. In cases of gross negligence, however, our liability is limited to the contract-typical, foreseeable damage.

Outside the instances of sentence 1, our liability for compensation of damage and for loss of futile expenses based on impossibility is also limited to the contract-typical, foreseeable damage. Any further claims of the Buyer for impossibility of performance are excluded. The right of the Buyer to withdraw from the contract remains unaffected.

Outside the instances of sentence 1, our liability for compensation based on a delay of performance in addition to performance shall be limited to 10% in total, and for compensation instead of performance to a total of 10% of the value of the performance. Further claims of the Buyer for delay of performance are excluded even after fruitless expiry of a time-limit for performance set for us. These provisions also apply to claims for the compensation of futile expenses.

The limitations under this section 3.7 do not apply to our liability for an injury of life, limb or health or for the breach of essential contractual obligations. Essential contractual obligations are obligations, the performance of which is definitive for the contract on which the Buyer may rely. The provisions above do not result in a change in the burden of proof to the detriment of the Buyer.

## § 4 Sanction Regulations

- 4.1 The customer shall comply with the applicable provisions of the national and European (re-)export control regulations when passing on the goods delivered by us and in the case of work and services performed by us to third parties. In any case, the customer is obliged to comply with (re-)export control regulations of the Federal Republic of Germany and the European Union when passing on such goods, work or services to third parties. If, due to these regulations, approval by the respective competent authorities should be required, the customer undertakes to apply for this independently and at its own expense and to inform us thereof.
- 4.2 Before passing on the goods delivered by us or the work and services performed by us to third parties, the customer is obliged to check and ensure by appropriate measures that
- 421 the customer does not violate any embargo of the European Union - also taking into account any restrictions for domestic business and any prohibitions of circumvention - by passing on the goods delivered by us or the work and services performed by us or by providing other resources in connection with such goods, work and services to third parties;
- 422 these goods, work and services are not intended for a prohibited or authorized use in connection with armaments, nuclear technology or weapons technology, unless any necessary authorizations have been obtained;
- 423 the regulations of all relevant sanction lists of the European Union concerning business transactions with companies, persons or organizations named therein are complied with;
- 4.3 Upon request, the customer shall immediately prove to us that the products do not violate the above-mentioned relevant regulations.
- 4.4 The customer shall fully indemnify us against all claims asserted against us by authorities or other third parties due to the customer's culpable violation of the aforementioned export control obligations and undertakes to compensate us for all damages and expenses incurred by us in this connection.



## § 5 Contingency on procurement of raw materials

We do not assume the procurement risk. If we do not receive the contract item or not entirely in regard to essential parts of the contract time, despite having concluded a matching supply contract, we are entitled to withdraw from the contract with the Buyer. Our liability for intent and negligence remain unaffected. We will inform the Buyer without undue delay about the non-availability or untimely availability of the contract item and exercise the right of withdrawal - provided that we wish to withdraw - without undue delay. In the event of a withdrawal, we will reimburse any considerations provided already by the Buyer without undue delay.

## § 6 Maturity - Interest - Consequences of delay

- 6.1 In case of payment after the expiry of the agreed term of payment, interest on arrears provided for by law are payable to us. Any further claims for damages remain unaffected.
- 6.2 As long as the Buyer is in default of payment, we are not obliged to make further deliveries irrespective of the legal basis for our delivery obligations.
- 6.3 If the Buyer suffers a material deterioration in his assets, in particular, if insolvency proceedings are opened in regard to the assets of the Buyer, then we shall be entitled to demand cash payments or any other security before delivery of the contract item for any outstanding deliveries, subject to cancellation of the agreed payment terms.
- 6.4 In cases where we have agreed payment in instalments and/or down payments, the following applies as well: If the Buyer is in arrears with the payment of an instalment or a down payment in full or in part for more than three days, then the outstanding amount will be due for payment immediately and in full.
- 6.5 If the shipment is delayed due to the fault or at the desire of the Customer, or if the Buyer is in default of acceptance on the date of maturity, then the Customer must still pay the purchase price. In this case, we will start storage of the contract item 14 days after the notice of readiness for shipment at the risk and expense of the Buyer.
- 6.6 If a collateral for the purchase price has been provided by a bank or any other third party, and if the delivery of the contract item cannot take place for reasons for which we are not responsible, then we are additionally entitled to demand the remainder of the outstanding purchase price from the bank or any other third party against provision of proof that the contract item has been stored. Such storage shall be made at the expense and risk of the Buyer. The date on which the contract item has been stored by us is deemed to be the date of delivery. All delivery documents and other documents that have to be submitted by us in order to obtain payment from a bank or any other third party, must be handed to us without undue delay by the author of these documents.

## § 7 Retention of title

- 7.1 We retain ownership in the contract item until performance of all claims that we have against the Buyer resulting out of the contractual relationship. In the event of a breach of contract by the Buyer, in particular in case of payment default, we are entitled to withdraw from the contract after the fruitless expiry of an appropriate grace period. In the event of a withdrawal from the contract, we shall be entitled to demand the return of the contract item, to resell or dispose otherwise of the contract item.
- 7.2 The Buyer is obliged to handle the contract item with care; the Buyer is in particular obliged to insure the goods at their own expense against fire, water damage and theft at replacement value. If maintenance and inspection work is required, the Buyer shall carry out such work at their own expense.
- 7.3 Notwithstanding the retention of title, the Buyer is entitled to resell the contract item in the normal course of business. The Buyer assigns already now the receivables resulting from the resale of the contract item to us in the amount of the agreed invoice amount (including value-added tax). This assignment is valid irrespective of whether the contract item has been resold without or after processing. The Buyer remains entitled to collect the claims even after the assignment. Our right to collect the claims ourselves is not affected. However, we undertake not to collect the claims as long as the Buyer meets their payment obligations, is not in default of payment and in particular as long as no application to commence insolvency proceedings has been filed in regard to the estate of the Customer or as long as the Buyer has not suspended payments.
- 7.4 In case of a pledge or other interventions of third parties, the Buyer shall notify us without undue delay in writing to enable us to file a claim pursuant to Section 771 of the German Code of Civil Procedure [ZPO]. If the third party is not in a position to reimburse us for the judicial and extrajudicial costs of a claim pursuant to Section 771 ZPO, the Buyer shall be liable for the costs incurred by us.
- 7.5 Any processing or conversion of the contract item by the Buyer is always undertaken on our behalf. If the contract item is processed with other goods that do not belong to us, we shall acquire co-ownership in the newly created goods at the ratio of the value of the contract item (final invoice amount, including VAT) to the other processed goods at the time of the processing. The goods created through processing shall be governed by the same provisions as the contract item delivered subject to retention of title.
- 7.6 If the contract item is mixed inseparably with other goods that do not belong to us, we shall acquire co-ownership in the newly created goods at the ratio of the value of the contract item (final invoice amount, including VAT) to the other intermixed goods at the time of the mixing. If the intermixture is done in such a way that the goods of the Buyer are to be regarded as the main items, the Buyer will be deemed to have agreed to the proportional transfer of ownership to us. The Buyer shall keep the thus created sole or co-ownership in the goods on our behalf.
- 7.7 The Buyer also assigns the claims to secure our claims against the Buyer that result from the combination of the contract item with immovable property against a third party.



- 7.8 We undertake to release all securities to which we are entitled at the request of the Buyer to the extent that the realisable value of our securities exceeds the claims that are to be secured by more than 10 %; we shall be entitled to select the securities that are to be released.

## § 8 Liability for defects

- 8.1 Claims of the Buyer based on defects require that the Buyer has properly discharged their duties of inspection and notification of defects in accordance with Section 377 of the German Commercial Code (HGB).
- 8.2 For special items, such as second-hand machinery, exhibits or displays, we do not accept any liability.
- 8.3 Weights, dimensions, specifications, income and other data referred to in sales brochures, advertising and similar documents are called merely serve as points of reference. The same applies for demonstrated or provided samples.
- 8.4 If the contract item is affected by a defect for which we are responsible, we shall be entitled, at our option, to cure the defect or deliver a new item devoid of defects.
- 8.5 If the cure fails, which can only be assumed after the second attempt at a repair or cure, the Buyer shall be entitled - at their option - to withdraw from the contract or demand a reduction of the contract price. Unless otherwise provided for in the following provisions (section 7.6, 7.7 and 7.8), any further claims of the Buyer - irrespective of the legal basis - are excluded. We are therefore not liable for damage that is not caused to the contract item itself; in particular we are not liable for a production or business interruption, the costs of a recall campaign, loss of profits or other financial damage suffered by the Buyer.
- 8.6 We shall be liable in accordance with the statutory provisions, provided that the Buyer asserts claims for damages that are based on intent or gross negligence, including intent or gross negligence of our representatives or persons used by us to perform our obligations. In case of claims not based on an intentional breach of contract on our part, our liability for damages is limited to the foreseeable, contract-typical damage.
- 8.7 We shall be liable in accordance with legal provisions, provided that we are culpable for an essential breach of contract; essential contract obligations are obligations that are definitive for the nature of the contract and on the performance of which the Buyer may rely. However, in this case, the liability for compensation of damage is limited to the foreseeable, contract-typical damage.
- 8.8 Liability for culpable injury to life, limb or health shall not be affected; this shall also apply to the mandatory liability according to the Product Liability Act and delict.

## § 9 Intellectual and industrial property rights, confidentiality

- 9.1 We retain all intellectual and industrial property rights in regard to the products, quotes, drafts, drawings and other documents, such as patents, utility models, designs, copyright and trade mark rights. The Buyer undertakes not to assert any claims as to intellectual and industrial property rights in the products and product modifications.
- 9.2 Any further liability of our company based on the violation of rights of third parties listed in section 8.1 is excluded, except in case of gross negligence or intent. Under no circumstances we shall be liable to third parties for claims resulting from a violation of rights stipulated in section 8.1, if the claims are related to illustrations, drawings, catalogues, specifications or other materials that were supplied to by the Buyer or on behalf of the Buyer.
- 9.3 We will defend the Buyer - subject to the above-mentioned limitations of liability - against any claims that are derived from a violation of the rights listed in section 8.1 during the contract-compliant use of our products and will assume the costs and compensation contributions imposed on the Buyer, provided the Buyer has informed us in writing and without delay of such claims asserted against them and has reserved for our benefit all defences and settlement negotiations.
- 9.4 All information and documents supplied by us to the Buyer shall remain our property, may not be copied, disclosed to third parties and used only for the agreed purposes. Upon request, all drawings and other documents related to offers must be returned.
- 9.5 If we have supplied items in accordance with drawings, models, patterns or other documents provided by the Buyer, then the Buyer shall warrant that intellectual or industrial property rights of third parties are not thereby infringed. If third parties prohibit the production and delivery of subject items, based on such intellectual or industrial property rights, we are entitled - without being obliged to examine the legal position - to cease any further activities and claim compensation in case the Buyer acted culpably. The Buyer also undertakes to release us without undue delay from all related claims asserted by third parties.

## § 10 Exclusion of further liability

- 10.1 Any further liability for damages as provided in the preceding terms and conditions is specifically excluded, irrespective of the legal nature of the asserted claim. This applies in particular to claims for damages based on a culpable breach of obligations in connection with the conclusion of contracts, on other breaches of obligations or for claims based on delictual claims for compensation of damage to assets pursuant to Section 823 of the German Civil Code (BGB). In addition, we shall not be liable in cases where claims are asserted against the Buyer based on the provisions of industrial property law.
- 10.2 The limitation of liability pursuant to section 9.1 also applies in cases where the Buyer claims compensation of futile expenses instead of a claim for compensation of the damage.



- 10.3 Where liability for damages vis-à-vis us is excluded or limited, this also applies to the personal liability of our employees, workers, staff, representatives and persons used by us to perform our obligations.

## § 11 Statute of limitation

Irrespective of their legal basis, claims of the Buyer against us shall be time-barred after one year after the date on which they have arisen. This does not apply in the cases referred to in Sections 438(1) No. 2 and 634a(1) No. 2 of the German Civil Code (BGB). This also does not apply if committed intentionally or in case of the fraudulent concealment of a defect or in case we have assumed a guarantee. This limitation period also does not apply to claims for damages in case of an injury to life, limb, health or freedom, in case of claims under the Product Liability act or a grossly negligent breach of duty or a breach of an essential contractual obligations. Essential contractual obligations are obligations, the performance of which is definitive for the contract on which the Buyer may rely. The provisions above do not result in a change in the burden of proof to the detriment of the Buyer.

## § 12 Miscellaneous provisions

- 12.1 The place of jurisdiction is 49205 Hasbergen, Federal Republic of Germany. We are also entitled to sue at the court competent for the Buyer or at any other court that may be competent under domestic or international law.
- 12.2 The place of performance is also 49205 Hasbergen, Federal Republic of Germany.
- 12.3 The Buyer consents to our saving of the data in accordance with the provisions of the German Federal Data Protection Act.
- 12.4 The Buyer is not permitted to assign any guarantee or warranty rights or other rights that have been granted to the Buyer as part of the contractual relationship with us, unless we have agreed in writing to the assignment.
- 12.5 In case the Buyer sells the products to third parties or exports them, he undertakes to comply with the import and export regulations for purchases of this type.
- 12.6 The law of the Federal Republic of Germany, with the exception of the collision rules of German Private International Law and the UN Sales Convention, applies to this agreement.