

Terms and Conditions for the supply of machine tools of DMG MORI in Croatia

to be applied to transactions concluded with

- a person who, when concluding the contract, acts for the purposes of his/her commercial or self-employed professional activities (entrepreneur);
- legal persons under public law or a special fund under public law

1. General

- 1.1. Any and all deliveries and services are governed by these Terms and Conditions and by specific contractual agreements, if any. Deviating terms and conditions of purchase of the customer do not become part of the contract, not even if the order is accepted. In default of any special agreement, a contract is deemed concluded upon written confirmation of the order by the supplier.
- 1.2. The supplier reserves all property rights and copyrights in samples, cost estimates/ quotations, drawings and similar information of tangible or non-tangible quality including in electronic form; they must not be made available to third parties. The supplier undertakes to make information and documents which are designated by the customer as confidential available to third parties with the customer's consent only.

2. Price and Payment

- 2.1. In default of any special agreement to the contrary, the prices are ex works, including loading at the works but exclusive of packaging. The prices are exclusive of the value-added tax which has to be paid on top at the statutory rate valid at the time.
- 2.2. In default of any special agreement to the contrary, payment is due and payable without deduction to the supplier's account as follows:
 - 30% within 10 days from the date of the down payment invoice,
 - 60% within 10 days from the notification to the customer that the machine is ready for dispatch,
 - the remainder within one month from the passing of the risk.
- 2.3. The customer is only entitled to withhold payments if and to the extent that his counter-claims are undisputed or have been established by a final non-appealable court decision (*res judicata*).
- 2.4. The customer is only entitled to set off his counter-claims arising from any other legal relationships if and to the extent that they are undisputed or have been established by a final non-appealable court decision (*res judicata*).

3. Delivery time, delay in delivery

- 3.1. The delivery time is specified in the agreements concluded between the contracting parties. Compliance with such delivery times by the supplier requires that all commercial and technical issues have been clarified between the contracting parties and that the customer has fulfilled all obligations incumbent on him such as the provision of any required official certificates or permits or the down payment. If this is not the case, the delivery time will be extended correspondingly. This does not apply if and to the extent that the supplier is responsible for the delay.
- 3.2. Compliance with the delivery times is subject to correct and timeous sub-supplier delivery to the supplier.
- 3.3. The delivery time is deemed complied with if the goods to be delivered have left the supplier plant by the expiry of the delivery time and the customer has been notified of the readiness for dispatch. If the dispatch is delayed for reasons attributable to the customer, the costs incurred as a result of the delay will be charged to the customer, starting one month after notification of the readiness for dispatch.
- 3.4. If non-compliance with the delivery time is due to force majeure, industrial riots or other events beyond the supplier's control, the delivery time will be extended by an adequate period. The supplier will inform the customer of the beginning and the end of such circumstances as soon as possible.
- 3.5. If the entire performance of the supplier becomes definitely impossible for reasons of extraordinary external events that occurred after entering into a contract, and before the performance is due, and which could not have been foreseen or prevented, avoided or eliminated, and for which neither the supplier nor the customer is liable, the obligation of the supplier ceases, and, if any payment from the customer has been made, he is entitled to restitution according civil law regulations. In case performance becomes only partially impossible, for reasons for which neither the supplier nor the customer is liable, and the customer has a legitimate interest in refusing partial delivery, the customer is entitled to withdraw from the contract. If this is not the case, the customer is obliged to pay such portion of the contractually agreed price as corresponds to the partial delivery.
- 3.6. If the impossibility or inability to perform occurs during a period where the customer is in default of acceptance or if the customer is solely or clearly for the most part responsible for said circumstances, the customer continues to be obliged to render the consideration.
- 3.7. If the supplier is in default and damage is incurred by the customer as a result thereof, the customer is entitled to claim lump-sum compensation for the delay amounting to 0.5% of the value of that part of the overall delivery which, due to the delay, is not available for timeous use or proper use as agreed in the contract, where such compensation can not amount to more than 5% of said value. The compensation may be claimed for each full week of the delay starting after 15th days as of the agreed delivery time of the contract.

- 3.8. If the customer grants to the supplier who is in default an adequate grace period for the delivery, and if the supplier fails to comply with such period, the customer will be entitled to withdraw from the contract in accordance with the statutory provisions.
- 3.9. Any further claims arising from the delay in delivery are exclusively subject to the provisions in section 7.2. of these Terms and Conditions.

4. Passing of risk, commissioning, acceptance and approval, performance by third parties

- 4.1. The risk passes to the customer as soon as the goods to be delivered have left the supplier plant, even in the case that partial deliveries are made or the supplier has agreed to also perform other services such as delivery and hand-over or installation or has accepted to pay the costs of dispatch. Any agreed acceptance and approval of the goods must take place without undue delay on the agreed date of acceptance and approval. The customer is not allowed to refuse acceptance and approval of the goods in the case of a minor defect.
- 4.2. The supplier is allowed to assign the claim to his financing partner. The financing partner as the owner of the claim is entitled to have the commissioning of any delivered machine done by a third party designated by him if he holds that this is necessary for collecting the assigned claim. The customer can reject such third party for good cause (e.g. lacking skill or qualification) without undue delay. Otherwise, the commissioning will be made by said third party.
- 4.3. If the dispatch is delayed or omitted for reasons attributable to the customer, the risk passes to the customer from the day of notification of the readiness for dispatch. The supplier undertakes to take out at the customer's expense insurance policies as are requested by the customer.
- 4.4. Partial deliveries are permissible only to the extent that they are reasonably acceptable for the customer.

5. Reservation of title

- 5.1. The supplier reserves title to the delivered goods until all payments under the supply contract have been received. If installation or assembly services are to be performed, title to the delivered goods will only pass to the customer after receipt of the remuneration payable for the installation/ assembly resp. of such portion of the payment as corresponds to the installation/ assembly services.
- 5.2. The supplier is entitled to insure the delivered goods at the customer's expense against theft, breakage, damage by fire, water or other damage unless the customer has demonstrably taken out such an insurance policy himself.
- 5.3. In the case that the customer is in breach of the contract, in particular in the case of non-payment despite maturity, the supplier is entitled to withdraw from the contract as is provided for by the statutory provisions and to claim return of the delivered goods relying on both the reservation of title and the withdrawal. Neither the fact that the supplier invokes the reservation of title nor the seizure of the delivered goods by the supplier must be deemed to constitute withdrawal from the contract.
- 5.4. If the delivered item is processed together with other items not belonging to the supplier, the supplier will share title to, and become co-owner of the new item in the proportion of the value of the delivered item and useful work invested at the time of the processing. Apart from that, the item generated by the processing is subject to the same regulations as the goods delivered subject to reservation of title, unless otherwise mandatorily prescribed by civil law regulations.
- 5.5. If the delivered item is inseparably mixed with other items not belonging to the supplier, the supplier will share title to, and become co-owner of the new item in the proportion of the value of the delivered and mixed item and the useful work invested at the time of mixing. If the mixing is made in the way that the item of the customer must be considered as the main item, the parties are deemed to have agreed that the customer transfers to the supplier pro rata ownership of the new item.
- 5.6. The customer retains the so generated sole-ownership or co-ownership item for the supplier.
- 5.7. The customer assigns to the supplier those claims by way of security for the supplier's claim which arise against a third party from the union of the delivered item with a real estate.
- 5.8. The supplier undertakes to release, upon the customer's request, the security provided to him to the extent that the value of the security exceeds the claims to be secured by more than 20%. The part of the security to be released is chosen by the supplier in its sole discretion.

6. Warranty

The supplier gives warranty of quality and title of the delivered goods as is described in the following articles, whereas the given warranties does not affect customer' rights belonging to him on other legal basis. The warranties as described below are valid on the territory of Republic of Croatia.

6.1. Defects of quality of new delivered goods:

- 6.1.1. All parts which prove to be defective within 18 months from delivery due to any circumstance having occurred before the passing of the risk must, at customer's request, be repaired. In case the supplier does not repair the goods in a reasonable time, the customer is entitled to request the defective goods to be substituted by new goods. The supplier must be informed of any detected defects in writing without undue delay. Any parts that have been substituted become the property of the suppliers.
- 6.1.2. The customer is obliged, after consultation with the supplier, to grant to the supplier the time and opportunity which

the suppliers considers necessary for any subsequent improvements or substitute deliveries, otherwise, the supplier is released from the liability for any consequences resulting therefrom. Only in urgent cases where the operating safety is endangered or for the prevention of unreasonably high damage, in which case the supplier has to be informed immediately, the customer will be entitled to remedy or eliminate the defect himself or through third parties and to claim reimbursement of the necessary expenses incurred thereby.

- 6.1.3. If and to the extent that the actions undertaken by the customer prove to be justified, the supplier bears the direct costs of the subsequent improvement resp. the substitute delivery including the costs of dispatch. The supplier further bears adequate costs of deinstallation/ disassembly and reinstallation/ reassembly and in addition – provided that this can reasonably be requested with regard to the specific circumstances of the individual case in question – the costs of any required provision of installers/ assemblers and auxiliaries.
- 6.1.4. If the customer relocates the delivered goods, in whole or in part, from the contractually agreed place of installation to another place, the customer will bear any additional costs incurred as a result of such relocation, including but not limited to any additional travelling expenses incurred by the supplier.
- 6.1.5. The customer is entitled to withdraw from the contract within the limits of the law if the supplier, in consideration of the exemptions provided for by law, fails to duly fulfil his obligations within a grace period granted to him for the purpose of subsequent improvement or substitute delivery due to a defect of quality. In the case of a minor defect, the customer will only be entitled to reduce the contractually agreed price.
- 6.1.6. Any further rights and claims are exclusively governed by section 7.2. of these Terms and Conditions.
- 6.1.7. The warranty is in particular excluded in the following cases: Unsuitable or improper use, defective installation/ assembly resp. commissioning by the customer or third parties, regular wear and tear, defective or careless treatment, improper maintenance, unsuitable operating means or facilities, defective construction work, unsuitable building ground, chemical, electrochemical or electric influences – unless the supplier is responsible for such circumstances.
- 6.1.8. If the customer or a third party carries out the subsequent improvement improperly, the supplier will accept no liability for the consequences resulting therefrom. The same applies to any changes made to the delivered goods without the prior consent of the supplier.

6.2. **Special regulation for defects of quality of used goods:**

Notwithstanding the preceding provisions, the warranty for defects of quality of used goods is excluded. This does not apply in the case of any fraudulently concealed defects or the breach of a guarantee. Apart from that, the contractual rights and claims of the customer remain unaffected even in the case of delivery of used goods.

6.3. **Defects of title**

- 6.3.1. If the use of the delivered goods entails an infringement of industrial property rights or copyrights in Croatia, the supplier generally will procure for the customer at the supplier's expense the right to continue the use of the delivered goods or will modify the delivered goods in a manner which is reasonably acceptable for the customer to the effect that the infringement of the protective rights is eliminated. If this will not be performed within a reasonable time, the customer will be entitled to withdraw from the contract or reduce the contractually agreed price. In addition, the supplier will indemnify the customer from any and all undisputed claims and claims of the owner of the respective protective right that have been established by a final non-appealable court decision (*res judicata*).
- 6.3.2. The supplier's obligations in the case of an infringement of industrial property rights or copyrights are exhaustively specified in section 6.3.1., subject to the provisions of section 7.2.
- 6.3.3. They only apply if
 - the customer informs the supplier of any invoked industrial property rights or copyrights without undue delay ("unverzüglich")
 - the customer supports and assist the supplier to a reasonable extent in the defence against the asserted claims resp. enables the supplier to carry out modification measures according to section 6.3.1.,
 - the right to take all defence measures including out-of-court settlements is reserved to the supplier,
 - the defect of title is not based on an instruction of the customer and
 - the infringement of the right was not caused by any unauthorized modification of the delivered goods or by any use of the delivered goods contrary to the contract.

7. **Liability**

- 7.3. If the delivered goods cannot be used by the customer as agreed in the contract due to the supplier's fault as a result of any omitted or defective execution of pre-or post-contractual proposals or recommendations or due to the breach of any other ancillary duties under the contract, including but not limited to the duty to provide instructions for the operation and maintenance of the delivered goods, the provisions contained in sections 6. and 7.2. apply *mutatis mutandis*; any further rights and claims of the customer are excluded.
- 7.4. The supplier is liable for all damages only in the following cases:
 - Intentional conduct attributable to the Supplier,
 - Grossly negligent conduct attributable to the Supplier,
 - Fraudulent conduct attributable to the Supplier

- in the case of defects of the delivered goods if and to the extent that Supplier's liability is based on the Obligation Act's provisions on liability for defective products.

In cases of slight negligence attributable to the Supplier, the Supplier shall be liable only for ordinary damages where the total liability of Supplier, irrespectively of the legal ground and number of incidents, shall be limited up to 100% of the purchase price. In cases of slight negligence attributable to the Supplier, there shall be no liability for the Supplier for any loss of profit, in particular, but not limited to loss or interruption of production, loss of use and loss of contracts. Likewise, there shall be no liability of the Supplier for non-pecuniary damages.

8. Limitation

All claims of the customer are subject to statutory prescribed statues of limitation.

9. Use of software

If and to the extent that the delivered goods include software, the customer is granted a non-exclusive right to use the delivered goods together with their documentation. It will be provided for use on the delivered goods destined for such purpose. It is forbidden to use the software on more than one system.

The customer is only allowed to copy, adapt, modify or translate the software or transform it from the object code to the source code to the extent permitted by law (Article 107 a et seqq. - Croatian Copyright and Related Rights Act). The customer undertakes not to remove or modify without the prior explicit consent of the supplier any manufacturer information including but not limited to any copyright notes.

All other rights in the software and the documentations including any copies thereof remain the property of the supplier resp. of the supplier of the software. Any grant of sublicenses is forbidden.

10. Applicable law, place of jurisdiction

10.3. All legal relations between the supplier and the customer are exclusively governed by the law of the Republic of Croatia applicable to the legal relations between Croatian parties.

10.4. Unless otherwise prescribed by statutory laws, the competent court at the supplier's registered office will have jurisdiction. The supplier is however also entitled to sue the customer at the customer's registered office.