

TERMS AND CONDITIONS OF SALE, DELIVERY AND PAYMENT for the supply of machinery and spare parts

1. Application, hierarchy

- 1.1 These Terms and Conditions of Sale, Delivery and Payment for the supply of machinery and spare parts (“**GTC**”) apply to all business dealings between Wilhelm Stoll Maschinenfabrik GmbH (“**STOLL**”) and its customers (“**Purchasers**”) and especially to all supplies of goods and services by STOLL (hereinafter called “**STOLL services**”) and to all payments by Purchasers.

These GTC have exclusive application. STOLL does not acknowledge Purchasers’ general trading conditions which deviate from, contradict or supplement these GTC unless STOLL confirms this in writing. Unconditional performance by STOLL or the acceptance of payments by STOLL does not signify acknowledgement of Purchasers’ general trading conditions which deviate from, contradict or supplement these GTC even in the absence of an explicit objection thereto.

- 1.2 The respective versions of these GTC even apply to future contracts for STOLL services with the same Purchaser without STOLL being obliged to refer to them again in every case; STOLL will promptly inform Purchasers of changes to these GTC.
- 1.3 Specific terms agreed with Purchasers in individual cases (including ancillary arrangements, additions and amendments) have priority over these GTC.
- 1.4 Other contractual provisions and documents referring to these GTC (such as a master supply contract or distributorship agreement, for instance) also have priority over these GTC in the event of contradictions. Otherwise, the other contractual provisions and documents apply in addition to these terms and conditions.

2. Conclusion of contracts

- 2.1 Quotations by STOLL are not generally binding and merely constitute an invitation to make an offer to STOLL.
- 2.2 An order from a Purchaser is a binding offer to contract. A contract is concluded by STOLL sending an order confirmation document.
- 2.3 Unless stated to the contrary in an order STOLL will be entitled to accept a Purchaser’s offer to contract within two weeks of its receipt.

3. Purchasers’ duty of cooperation

- 3.1 Purchasers may only use STOLL services in accordance with their contracts and statute. Purchasers must take appropriate measures to ensure that third parties, especially Purchasers’ own customers, do not use STOLL services contrary to contract or statute.
- 3.2 Unless expressly agreed to the contrary Purchasers themselves are responsible for compliance with national legislation, regulations and safety rules governing the operation of STOLL services – particularly in relation to authorisation, installation, deployment and application, maintenance and repair – and undertake to comply therewith. Purchasers are obliged to indemnify STOLL from all claims arising from failure by Purchasers to comply with such provisions unless Purchasers are not responsible for the breach of duty, in the case of fault-based liability.
- 3.3 Purchasers themselves are responsible for the flawless technical condition, functionality and compatibility of their equipment with STOLL services and for appropriate power supplies, internet access and other connections.
- 3.4 Purchasers themselves must autonomously check the use of STOLL services for any purpose other than that provided in their contracts. The risk of fitness for use and application lies exclusively with Purchasers in this respect. If the Purchaser wishes to use or combine his product or a third-party product with the services of STOLL, or if the Purchaser wishes to advertise or sell to his customers for the purpose of appropriate use or connection, the Purchaser is also responsible for checking the compatibility of his own Product or the third-party product with the services of STOLL and to check the corresponding approvals of the manufacturers. If the Purchaser’s examination reveals that there is a possibility of incompatibility or a non-existent release, the Purchaser is obliged to avert danger. In any case, the Purchaser is obliged to inform his customer in writing about the result of the test.
- 3.5 STOLL are not generally aware of the actual place of deployment or use of STOLL services. Purchasers are therefore required to carry out their own checks as to whether there are any violations of intellectual property or other legal infringements at the place of delivery or use as a result of the provision or application of STOLL services and whether STOLL services can be deployed at the place of use.
- 3.6 Purchasers must promptly inform STOLL of any changes in data of relevance to contracts, especially any change of name, legal form, registered/head office, bank details, name of their contact person and fundamental changes in their financial circumstances (insolvency proceedings, compulsory enforcement measures etc.).

4. Price, price adjustment

- 4.1 The agreed prices encompass just the agreed scope of services and, in the absence of any specific agreement, are quoted ex works, including loading at our works but excluding other services such as packaging and unloading and excluding any insurance. VAT is added to prices in the statutory amount applicable.
- 4.2 If no price should be agreed on conclusion of a contract the prices applicable at STOLL on the date of conclusion of the contract will apply.
- 4.3 If after the conclusion of a contract there should be a change of at least 5% in prices and costs on which STOLL's calculations are based, especially in the cost of staffing, supplies, raw materials, transport or energy – even due to variations in currency exchange rates – STOLL and the Purchaser will both have the right to negotiate new prices. STOLL must promptly notify the Purchaser of the change in price and costs and provide convincing reasons for same.

Should the Parties fail to arrive at an agreement on new prices within 2 months of notification by STOLL both contracting parties will have the right to cancel the contract in that respect without being liable in damages for cancellation. STOLL will not be obliged to take or seek to take measures which result in a drop in agreed prices.

5. Invoicing, payment, payment arrears, set-off

- 5.1 Failing any specific agreement Purchasers are required to settle invoices from STOLL immediately without any deductions. A discount will only be permitted if expressly agreed. An agreement to allow a discount will only take and remain in effect provided that Purchasers are not in arrears with any other payments under the business relationship.
- 5.2 Unless Purchasers lodge a written substantiated objection to invoices raised within one month of receipt thereof invoices will be deemed approved in substance (especially regarding the services ordered and invoice figure). Purchasers' statutory claims, especially for defects, will not be affected.
- 5.3 Purchasers will be deemed in default without the need for prior warning if they should fail to pay invoices within ten days of the invoice date unless an invoice raised has not been sent by that date, is erroneous, not due and payable or unenforceable. A state of default may also arise according to statute. Should a Purchaser be in default STOLL may charge interest for arrears. The right to claim higher damages for default is not prejudiced thereby.
- 5.4 A Purchaser may not offset its claims against debts due to STOLL or exercise a right of retention unless the Purchaser's claim or counterclaim is uncontested, finally established or has at least reached the decision stage. A set-off or the exercise of a right of retention will also be possible if a Purchaser's claim and the debt due to STOLL are legally founded on one and the same reciprocal relationship.

6. Delivery dates, delay in delivery

- 6.1 Agreed delivery dates or periods are to be considered approximate only unless they are explicitly stated to be binding.
- 6.2 Delivery dates are derived from the agreements between the contracting parties. Their observance by STOLL is conditional upon all commercial and technical queries being clarified in full between the contracting parties and Purchasers having fulfilled all commitments, e.g. having made any advance payment due. Should this not be the case the delivery period will be reasonably extended. This will not apply if it is STOLL that is responsible for the delay.
- 6.3 If STOLL should be unable to meet binding delivery dates for reasons for which STOLL are not responsible (in the case of force majeure, for instance) STOLL must promptly inform the Purchaser thereof and at the same time give an expected new delivery period. Should it still not be possible for the STOLL services to be performed within that new delivery period STOLL will be entitled to cancel the contract in whole or in part; any counter-consideration already paid by the Purchaser will be immediately refunded. The Purchaser will also be entitled to cancel if it has no interest in delayed performance.
- 6.4 A delay in performance will be determined by statute. In the event of a delay in performance STOLL's liability in damages will be governed exclusively by clause 13 of these GTC.

7. Passage of risk, acceptance

- 7.1 STOLL services are performed ex warehouse, which is also the place of performance. At a Purchaser's request STOLL will dispatch goods to another destination at the Purchaser's expense (sale to destination). Unless otherwise agreed, STOLL will be entitled to designate the type of consignment (particularly the carrier, route and packaging, where applicable).
- 7.2 The risk of accidental loss and accidental deterioration of STOLL services passes by no later than the date of handover to a Purchaser. In the case of a sale to destination, however, the risk of accidental loss and accidental deterioration of the goods and the risk of delay pass as soon as STOLL services are handed over to the carrier, freight forwarder or any other person or body designated to effect dispatch. Where acceptance is agreed or required by law this will determine the passage of risk. Handover or acceptance will still be deemed to have been effected if a Purchaser should be in default with acceptance.
- 7.3 Should a Purchaser delay in acceptance or fail to perform the requisite acts of cooperation, or should delivery be delayed for other reasons for which a Purchaser is responsible, STOLL will be entitled to require the resultant loss to be compensated. STOLL will charge lump-sum compensation for this in the sum of 0.5% of the net value of the STOLL services per calendar week (with a maximum of 5 % of the net value of the STOLL services) beginning with the agreed delivery date or, in the absence of a delivery date or delivery period, with the date of notification of the goods being ready for dispatch.

Although the right is reserved to adduce evidence to show a higher loss or statutory entitlement (especially compensation for extra expense, equitable damages or termination) this lump-sum compensation must be offset against further claims in damages. Purchasers remain entitled to adduce evidence to show that STOLL have not sustained any loss at all or just a significantly lower loss than the aforementioned lump-sum compensation.

- 7.4 Part-performance is permitted to a reasonable extent. Part-performance will be unreasonable, for example, if a Purchaser has no interest in part-performance or if only a small quantity (still) remains to be performed prior to part-performance or would be left over as a result of part-performance.

8. Retention of title

- 8.1 STOLL retain title to STOLL services until such time as all payments under the business relationship are received ("retention goods").
- 8.2 STOLL are entitled to insure retention goods against theft, breakages and fire, water and other damage at a Purchaser's expense if there is no proof that the Purchaser has insured them itself.
- 8.3 In the event of damage in transit Purchasers must draw up a damage report to safeguard any claims in damages against the carrier. STOLL are to be immediately informed of this damage report.
- 8.4 In the event of conduct in breach of contract on the part of a Purchaser, especially in the case of arrears of payment, STOLL will be entitled to take back the item delivered after first giving a warning and the Purchaser will be obliged to surrender it.
- 8.5 Purchasers may resell retention goods, but only in the ordinary course of business and only provided that they are not in default with commitments under the contract concerned. In the event of retention goods being seized or confiscated or any other disposal thereof being ordered Purchasers must immediately inform STOLL.
- 8.6 Purchasers hereby assign to STOLL any claims on retention goods accruing to Purchasers from their resale or on other legal grounds. STOLL hereby accept such assignment. The claims assigned serve as security for STOLL in the amount of the value of the retention goods, including all other claims under the contract concerned, e.g. the cost of spare parts, accessories, freight charges and insurance cover. At the request of STOLL Purchasers must give garnishees notice of the assignment, provide STOLL with all information necessary to assert their claims and hand the documentation over to STOLL.
- 8.7 Should Purchasers sell retention goods to customers who meet their payment commitments with the help of a loan from a financial institution or the like the assignment will also extend to claims that Purchasers acquire against the financial institution.
- 8.8 If Purchasers should take second-hand equipment in part-payment on a resale or other disposal of retention goods they will acquire title thereto for STOLL provided that STOLL still have claims outstanding against them under the contract concerned. Purchasers must keep such machinery for STOLL until resale duly takes place. The provisions on retention goods apply mutatis mutandis to claims from such resales of equipment taken in payment.
- 8.9 Retention title extends to products arising as a result of processing, mixing or combining goods, when STOLL will be deemed the manufacturer. If title thereto should remain following processing, mixing or combining with other goods STOLL will acquire joint title in the ratio that the invoice value of the retention goods bears to that of the other materials.

8.10 At a Purchaser's request STOLL will be obliged to release such security given to them as the Purchaser may choose where its realisable value exceeds the claims to be secured by 10 %.

9. Rights to information of a tangible and intangible nature

STOLL retain all rights to samples, cost estimates, drawings, documents and other information of a tangible and intangible nature – even in electronic form – especially title and copyright; Purchasers must not make them accessible to third parties.

10. Translations of assembly and operating instructions

10.1 Where required, STOLL will only provide Purchasers with instructions, especially assembly and operating instructions, in German, English or French irrespective of where Purchasers install STOLL services and wherever Purchasers sell them.

10.2 Purchasers are aware that DIRECTIVE 2006/42/EC (machinery directive) states that operating instructions must be provided in the official language(s) of the EU Member State in which machinery is placed on the market and/or put into service.

10.3 Purchasers are required to have all instructions provided by STOLL translated at their own expense by a technically adept specialist translator into the official language(s) of the EU Member States where STOLL services are to be placed on the market or put into service. Should Purchasers fail to comply with this requirement they must fully indemnify STOLL in respect of all resultant claims brought by third parties or by the authorities unless Purchasers are not responsible for the breach of duty in the case of fault-based liability.

11. Agreement on quality (§ 434 paragraph 1 German Civil Code), warranties (§ 443 German Civil Code), spare parts supply

11.1 The quality due is determined exclusively by the expressly agreed features of performance. No warranty (§ 434 paragraph 1 German Civil Code) over and above this agreement on quality, especially for unforeseen intended deployment, a specific length of use or durability following the passage of risk, is given by STOLL unless expressly agreed. In the absence of an expressly contrary agreement, STOLL in particular does not warrant the compatibility of a product of the Purchaser or a third party product with the services of STOLL and also does not warrant that the corresponding approvals from the manufacturers exist.

11.2 STOLL only give a warranty (§ 434 paragraph 1 German Civil Code) that STOLL services meet the mandatory statutory provisions applicable at their headquarters. Compliance with other provisions applicable at the actual place of deployment is the responsibility of Purchasers. Specifically, where DIRECTIVE 2006/42/EC (machinery directive) applies to STOLL services STOLL will only be liable for production in accordance with the provisions of the machinery directive unless anything to the contrary is expressly agreed.

11.3 All references to technical standards just constitute an approximate description of performance. Weights and measures regarding STOLL services given in brochures are provided to the best of our knowledge. We reserve the right to allow reasonable variations in design and make design changes. The operation of software programmes / modules offered is confined to the description in the specifications. We also reserve the right to use comparatively new or reconditioned parts that are as good as new.

11.4 Assurances and warranties (§ 443 German Civil Code) are only valid if STOLL gives them expressly and in writing.

11.5 With regard to front loaders and attachments sold, STOLL warrants a supply of spare parts for a maximum of 5 years, starting from the end of the serial production of the front loader or the attachment to which the spare part belongs.

12. Duty to carry out inspections and raise complaints, liability for defective quality and title

Where there is a defect in STOLL services in the legal sense there will be a warranty claim (§ 437 German Civil Code). The following provisions will apply with priority over statute.

12.1 There will be no defect in the legal sense in the following cases:

12.1.1 Unsuitable or improper, incorrect or negligent handling or use, incorrect installation by Purchasers or third parties, natural and fair wear and tear, excessive strain or overlay or improper storage or overlay or improper storage, use of inappropriate appliances, improper changes to STOLL services made without the prior consent of STOLL or repair work carried out by Purchasers or third parties.

- 12.1.2 Purchasers are aware that given the present state-of-the-art it is not possible to create software that is entirely free of defects. There will not be a defect where there are flaws in functions that are not fundamental and necessary for the safe operation of STOLL services and for their contractual use.
- 12.1.3 Nor will there be a defect even if assembly instructions are incorrect if assembly has been error-free.
- 12.1.4 If STOLL services should differ slightly from the performance agreed or if STOLL services should differ slightly from the performance agreed quantity-wise this will not constitute a quality defect. In the event of deliveries of a slightly lower quantity Purchasers may just ask for a price reduction.
- 12.2 Where sale of goods legislation applies it will be for Purchasers to inspect the STOLL services immediately upon delivery. If a defect should be revealed upon inspection Purchasers are obliged to notify STOLL immediately and in any event within 8 working days of receipt of STOLL services. If a defect should be revealed later on Purchasers are also required to notify STOLL of the defect immediately and in any event within 3 working days of discovery. Otherwise STOLL services will be deemed approved. The provision in § 377 HGB [German Commercial Code] also applies.
- 12.3 If a complaint of a defect in STOLL services made by a Purchaser should be unfounded the Purchaser will not be able to assert any warranty claim or rights (§ 437 German Civil Code). STOLL may charge the Purchaser for services that STOLL provides due to such a complaint at the request or demand of a Purchaser according to prices applicable at STOLL or at market prices, along with the costs incurred therein (particularly analysis, repair and transportation costs and travelling expenses).
- 12.4 In the event of complaints of defects the Purchaser shall submit a warranty claim via the homepage of STOLL (<https://www.stoll-germany.com/en/after-sales/warranty-claim.html>).
- 12.5 In the event of complaints of defects that are justified STOLL will be obliged to either remedy the defects or effect flawless delivery, as it may choose (rectification). If either of these two types of rectification should be impossible or disproportionate STOLL will be entitled to refuse same.
- STOLL may refuse rectification if a Purchaser fails to meet its payment commitments towards STOLL for the non-defective part of STOLL services unless the Purchaser has no interest in the non-defective part of STOLL services.
- STOLL will bear the costs incurred for rectification purposes, especially transportation and travel costs, labour costs and the cost of materials. These costs do not include the extra costs incurred in rendering STOLL services at a location other than the place of performance.
- Rectification does not include disassembly and installation work or liability for the costs thereof.
- 12.6 Should rectification prove unnecessary or impossible, should it fail or be wrongly refused or delayed by STOLL the Purchaser will have the option pursuant to statute to either have the purchase price reduced accordingly or to cancel the contract. Claims in damages are governed exclusively by clause 13 of these GTC.
- 12.7 The following will apply in the event of defective title:
- 12.7.1 If, when used for their agreed or contractually intended purpose, the implementation of STOLL services should lead in this country to an infringement of industrial property rights or copyright STOLL will, if the legal requirements are met, at its own expense, arrange for Purchasers to have the right to continue to use them or else make reasonable modifications to STOLL services for Purchasers in such a way that intellectual property rights are no longer violated. Should this prove impossible on reasonable economic terms or within a reasonable period of time both Purchasers and STOLL will be entitled to cancel the contract. STOLL will also indemnify Purchasers in respect of uncontested or finally established claims on the part of intellectual property right owners unless STOLL should not be responsible for the breach of duty.
- 12.7.2 Purchasers will not have the aforementioned rights if
- a) the quality defect is based on an instruction given by a Purchaser or
 - b) the quality defect is caused by a Purchaser modifying STOLL services of its own volition or in a manner that does not comply with the contract.
- 12.7.3 Purchasers are required
- a) to promptly notify STOLL of claims asserted for infringement of industrial property rights or copyright,
 - b) to provide STOLL with reasonable support in defending asserted claims or enable STOLL to carry out modification work,
- 12.7.4 STOLL reserve the right to take all defensive measures, including the conclusion of out-of-court settlements.

12.8 Warranty claims (§ 437 German Civil Code) will become statute-barred one year after first use of STOLL services by the customer (relevant is the date of transfer declaration of the customer), no more than 18 months after delivery of STOLL services to the Purchaser or after acceptance of STOLL services where acceptance is required by law or under the contract. Warranty claims (§ 437 German Civil Code) regarding spare parts will become statute-barred one year after delivery of the contract products to the Purchaser.

In the cases of §§ 438 para. 1 no. 2, 438 para. 3, 634a para. 1 no. 2, 634a para. 3 BGB (German Civil Code), the statute of limitation provided for therein applies.

Should STOLL prove liable in damages for a warranty under clause 13 of these GTC the warranty period as regards the claim in damages will be governed by statute alone.

13. Limit on liability in damages

13.1 Should STOLL or the legal representatives, employees or agents of STOLL be in breach of duty as a result of wilful intent or gross negligence, irrespective of the nature and legal grounds thereof but especially under the contract or in a case of deliberate or grossly negligent commission of an offence of tort, STOLL will be liable for the consequent loss sustained by Purchasers pursuant to statute.

13.2 Should STOLL or the legal representatives, employees or agents of STOLL be in breach of duty as a result of simple negligence, irrespective of the nature and legal grounds thereof but especially under the contract or in the case of simple negligent commission of an offence of tort, any claim in damages against STOLL on the part of a Purchaser will be precluded except in the case of simple negligent violation of a fundamental contractual obligation. In that eventuality STOLL's liability will be limited to foreseeable damage typical of the contract concerned. A fundamental contractual obligation for this purpose means one the fulfilment of which makes proper execution of the contract possible and on the observance of which a Purchaser regularly relies and is entitled to rely.

13.3 The above exclusions from liability and limits on liability do not apply to instances of culpable loss of life, personal injury, or damage to health, nor in the event of fraudulent concealment of a defect, where a warranty of quality (§ 443 German Civil Code) is not fulfilled or where there is liability under the Product Liability Act.

13.4 The statutory rules on burden of proof are not affected by the above provisions.

14. Software usage

Where software is included in deliveries Purchasers are granted a non-exclusive right to use the software supplied, including its documentation. However, it is provided solely to be used for the contractual purpose. Use of software on more than one system is prohibited. Unless otherwise agreed by contract Purchasers may only reproduce, rework or translate the software or convert it from object code to source code to the agreed and legally permissible extent (§§ 69 a et seq. UrhG [German Copyright Act]). Purchasers undertake not to remove manufacturer details - especially copyright notices - or change them without STOLL's express prior consent.

All other rights to software and the documentation, including copies, are retained by STOLL or the software supplier. Purchasers are not permitted to grant sublicences.

15. Data protection

Purchasers' data is processed and saved at STOLL headquarters for STOLL's own purposes exclusively in accordance with legal requirements.

16. Law applicable, forum

16.1 All legal relationships between STOLL and Purchasers are governed solely by German law to the exclusion of the UN Convention on the International Sale of Goods [CISG] and private international law.

16.2 The exclusive international forum for all disputes arising from the business relationship is the Federal Republic of Germany. The exclusive local forum is the STOLL headquarters where Purchasers are traders, legal persons governed by public law or special funds under public law. STOLL may also sue Purchasers in courts having local jurisdiction under the law.